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# ENVIRONMENTAL ASSESSMENT BOARD

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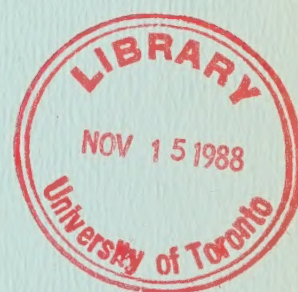
VOLUME: 53

DATE: November 3rd, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St., Thunder  
Bay, Ontario, on Thursday, November 3rd,  
1988, commencing at 8:30 a.m.

-----  
VOLUME 53

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member








A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
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MS. K. MURPHY )	RESOURCES
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MR. R. LINDGREN )	
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MS. B. LLOYD )	



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APPEARANCES: (Cont'd)

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APPEARANCES: (Cont'd)

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NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

Witness:

<u>CAMERON CLARK,</u>	
<u>FRANK KENNEDY,</u>	
<u>JOHN McNICOL,</u>	
<u>JOSEPH BEECHEY,</u>	
<u>NEVILLE WARD,</u>	
<u>GORDON PYZER, Sworn</u>	8954

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I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
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304	Use of the Timber Management Guidelines for the Protection of Fish Habitat.	8957
305	Bottom contour map.	8990
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307	Shoreline slope map.	8994
308	Document dated October, 1988, from Wildlife Branch No. 2.	9013
309	Status report on endangered wildlife in Canada for deep water sculpin.	9044
310	Timber Management Guidelines for the Provision of Moose Habitat.	9071
311	Letter dated November 10, 1987 from D.W. Simkin, Director of Wildlife Branch.	9071
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314	Stratification of Wildlife Management Unit 13.	9097
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317	Aerial Moose Age and Sex Survey Observation Summary Form.	9101
318	Moose kill summary map.	9107
319	Sensitive areas map, Thunder Bay District.	9117
320	Document entitled: Crown Land Timber Management and Rare, Threatened or Endangered Species in Ontario, a 1988 update dated June 10, 1988.	9134
321	Diagram of trapline and cutting.	9144





1 ---Upon commencing at 8:45 a.m.

2 THE CHAIRMAN: Good morning, ladies and  
3 gentlemen. I apologize for the delay.

4 Very well, Mr. Freidin.

5 CAMERON CLARK,  
6 FRANK KENNEDY,  
7 JOHN McNICOL,  
8 JOSEPH BEECHEY,  
9 NEVILLE WARD,  
10 GORDON PYZER, Recalled

11 CONTINUED DIRECT EXAMINATION BY MR. FREIDIN:

12 Q. Mr. Ward, I want to go back to a  
13 subject matter which was discussed almost at the end of  
14 yesterday's examination. If you turn to page 537 of  
15 the witness statement.

16 MR. WARD: A. Yes.

17 Q. Now, in the discussion about that  
18 chart yesterday I believe there was some confusion as  
19 to whether or not the Ministry of Natural Resources  
20 protects lakes from the potential effects of timber  
21 management when those lakes are less than the sizes  
22 referred to in the second column of that particular  
23 graph.

24 Now, I am wondering whether you could  
25 comment on that particular matter?

26 A. Okay. The sizes of lakes are really  
27 the lakes in the District Fisheries Management Plans

1       that we consider for producing fish. So that basically  
2       in meeting our fisheries objectives in the District  
3       Fisheries Management Plans, those are sort of the lakes  
4       that we have used to calculate the total fish  
5       production.

6                   They don't have any reference to the size  
7       of lakes that we protect from timber management  
8       activities or use the fish habitat guidelines.

9                   Q. I understand that we will be visiting  
10      the fish habitat guidelines in just a moment?

11                  A. Right.

12                  Q. Okay.

13                  A. I think the reason that we put in  
14      this appendix into the evidence was that we wanted to  
15      illustrate to the Board that we do have a fair bit of  
16      inventory information in the area of the undertaking  
17      and this inventory information is being collected for  
18      other purposes besides timber management purposes, and  
19      that's why the figure of 55 per cent of the surface  
20      area of the water in the area of the undertaking has  
21      been surveyed. We think that's a significant figure.

22                  Q. Thank you.

23                  MR. FREIDIN: Now, Mr. Chairman, I am  
24      going to have the witness deal with two documents and,  
25      first of all, I would like to make sure that everyone



1 has a copy.

2 A letter was sent out, oh, about a week  
3 or so ago, a week and a half ago that two documents  
4 would be discussed in this evidence; the first one  
5 being the Timber Management Guidelines for the  
6 Protection of Fish Habitat. It was a document which  
7 formed part of the material in evidence package 8.

8 THE CHAIRMAN: We have it.

9 MR. FREIDIN: All right. And perhaps I  
10 can also advise, the other document that the witness is  
11 going to be referring to is a document entitled: Use  
12 of the Timber Management Guidelines for the Protection  
13 of Fish Habitat. It is a four-page document.

14 THE CHAIRMAN: I am not sure that we have  
15 that one.

16 MR. FREIDIN: Okay. Well, I have got  
17 extra copies. Do the other people here have a copy of  
18 that particular policy?

19 (No response)

20 All right. It is in Panel No. 10, I  
21 think it was also -- yes. There was also a copy in  
22 panel...

23 MR. CAMPBELL: It is page 940 of Panel  
24 10.

25 THE CHAIRMAN: Panel 10.

1 MR. FREIDIN: I think we will just hand  
2 it out, that's the easiest thing to do, Mr. Chairman.

3 Mr. Chairman, perhaps the best thing to  
4 do is if I could mark or have marked the Timber  
5 Management Guidelines for the Protection of Fish  
6 Habitat as the next exhibit and then have marked,  
7 subsequent to that, a copy of the policy that I am  
8 referring to.

9 THE CHAIRMAN: Okay. The first one will  
10 be Timber Management Guidelines for the Protection of  
11 Fish Habitat. That will be Exhibit No. 303. And the  
12 policy you just referred to will be Exhibit 304.

13 ---EXHIBIT NO. 303: Timber Management Guidelines for  
14 the Protection of Fish Habitat.

15 ---EXHIBIT NO. 304: Use of the Timber Management  
16 Guidelines for the Protection of  
Fish Habitat.

17 MR. FREIDIN: And I have a clean copy of  
18 the Guidelines. (handed)

19 THE CHAIRMAN: Perhaps for the record  
20 too, Mr. Freidin, we might also refer to the fact that  
21 the policy exhibited as Exhibit 304 is also part of the  
22 witness statement for Panel 10 at page...

23 MR. CAMPBELL: 940.

24 THE CHAIRMAN: 940. Thank you.

25 MR. FREIDIN: Q. Mr. Ward, I would ask

1 that you describe in a general way to the Board what  
2 each of those documents that have just been filed are.

3 Perhaps you can commence by speaking to  
4 the Timber Management Guidelines for the Protection of  
5 Fish Habitat which is Exhibit No. 303.

6 MR. WARD: A. Right. The objectives of  
7 these guidelines are not only to protect fish habitat  
8 but to protect water quality as well. And if I can  
9 basically take the Board through these guidelines  
10 briefly, there is sort of two components to them.

11 One is the green pages in the front of  
12 the actual guidelines themselves in sort of a summary  
13 table that's listed and I will come back to that in a  
14 minute. And the last part --

15 Q. Excuse me, Mr. Ward -- all right.

16 A. And the back part is the background  
17 document which provides an outline of the rationale for  
18 developing these guidelines.

19 Now, if I can just go through some of the  
20 titles to give the Board an idea of what is covered in  
21 these guidelines I will start on page 4.

22 The first point I would like to mention is  
23 that we have a responsibility to protect fish habitat,  
24 we have the legislative authority to do so under the  
25 Federal Fisheries Act. Basically there is a section in



1       there that prohibits any work or undertaking that  
2       results in the harmful alteration, disruption or  
3       destruction of fish habitat.

4               The next section deals with habitat  
5       requirements of fish, and at the top of page 5 on the  
6       left-hand column I wish to draw the Board's attention  
7       to the definitions of critical fish habitats as defined  
8       in these guidelines.

9               These are required for the maintenance of  
10      a healthy fish population, of importance to achieving  
11      stated fisheries management objectives and these  
12      objectives have been stated in District Fisheries  
13      Management Plans which have been produced -- are being  
14      produced across the province.

15              Critical fish habitats include the  
16      following: Headwater areas, example, springs; the  
17      source of water to downstream areas are often important  
18      for spawning, and it has got the implications for the  
19      water quality concerns there; spawning areas, they are  
20      essential for reproduction and frequently limited in  
21      availability; nursery areas, they provide cover and  
22      food for young fish; wetlands, which stabilize water  
23      flow and frequently provide spawning or nursery  
24      habitat; and migration areas, they provide access to  
25      spawning, nursery and other habitats.

1           The other point to mention here is that  
2           what follows is that we explain why we have more  
3           stringent requirements on cold water fish communities  
4           because of their sensitivity to various stresses. So  
5           that's listed there as well.

6           We list the potential effects of timber  
7           management operations on fish habitat. I will just  
8           mention the titles because other panels will go into  
9           more details on those effects: Water yield erosion and  
10          sedimentation; logging debris; nutrient input; food  
11          production; cover; temperature.

12          Then we have a section on the factors  
13          that influence the requirements for modified timber  
14          management. Again, we describe critical fish habitats,  
15          we talk about our cold water fish communities of lake  
16          trout, lake self-sustaining brook trout lakes, aurora  
17          trout lakes, and then other fish habitats.

18          The composition of shoreline vegetation  
19          and width of the shoreline vegetation is explained.

20          Q. That's on page 9?

21          A. On page 9, right. The other point to  
22          mention is that there is a need in sensitive areas,  
23          such as lake trout lakes, to have a continuity of  
24          standing timber, and that effective protection of  
25          critical stream habitats requires that upstream regions

1 also be protected.

2 One of the points that we have mentioned  
3 in the guidelines is, where possible, a continuous  
4 stand of timber should be maintained upstream to at  
5 least the first permanent water basin or bog. This  
6 provides an opportunity for sediment and debris to  
7 settle out on upstream activities.

8 Q. Where exactly is that particular  
9 reference?

10 A. That's on page No. 10 under the  
11 Section 5.5, continuity of standing timber.

12 Q. At the end of the first paragraph?

13 A. Right. The sentence I just read came  
14 from -- it is in the third paragraph on Section 5.5.

15 Q. All right. Sorry.

16 A. We also talk about blowdown and  
17 requirements basically to prevent blowdown are site  
18 specific and the width of standing timber maintained  
19 must be prescribed accordingly. So it is flexible, you  
20 can't decide without knowing something about the site  
21 and the orientation to prevailing winds whether you  
22 need to have a wider stand of standing timber to  
23 prevent blowdown.

24 We do describe areas of concern, how we  
25 identify them and the statement in there of importance



1 is that wherever water quality or fish habitat must be  
2 protected, all portions of the shoreland selected for  
3 timber operations should be identified as areas of  
4 concern. We talk about the size of the areas of  
5 concern. Basically they vary depending on slope and  
6 can range from 30 to 90 metres in width.

7 And page 11, Section 7, the rationale for  
8 provincial guidelines. One sentence I would like to  
9 draw the Board's attention to is the last two sentences  
10 in the first paragraph under 7.1:

11 "That local managers should therefore  
12 use their discretion in adapting the  
13 guidelines to the needs of site-specific  
14 situations. Any departures from the  
15 guidelines must however be consistent  
16 with the objective of protecting fish  
17 habitat and water quality."

18 This just doesn't imply that we are going  
19 to loosen up the restrictions in any way. In some  
20 cases, we have more protection requirements than the  
21 guidelines state.

22 For example, in the northwestern region,  
23 we treat our musky lakes the same way as lake trout  
24 lakes are treated; that is, we have a continuous  
25 shoreline reserve around them, and it is partly because

1 of new information that we are learning about musky  
2 populations.

3 Traditionally, we have always thought  
4 they have spawned like pike do in the spring on wetland  
5 vegetation. We have found with some research that has  
6 been carried out by the Royal Ontario Museum on a  
7 couple of large musky lakes in the northwest region  
8 that they do spawn a second time in June and in areas  
9 that are further offshore and sandy areas, which is new  
10 information.

11 And since we don't have the location of  
12 those areas for musky lakes, we are just learning about  
13 it, we felt the best position there is to protect them  
14 with a continuous reserve of timber around the  
15 shoreline because we are not definite where the  
16 critical habitat was for musky.

17 Q. But I understand that musky do not --  
18 are in warm water lakes?

19 A. That's right. They would normally be  
20 classified under the other fish habitats.

21 Q. And under the guidelines, which type  
22 of lake has the more stringent requirements under the  
23 guidelines?

24 A. The cold water lake trout  
25 communities.

1 Q. Thank you.

2 A. We discuss the operations within the  
3 areas of concern. Again, on page 11, we talk about  
4 roads, we give some guidance there.

5 We talk about basically that roads should  
6 not be located within areas of concern. There are some  
7 exceptions of course when you have to cross water. In  
8 that case, road construction within the area of concern  
9 should only occur where it can demonstrated that road  
10 design, construction, use and maintenance will ensure  
11 protection of fish habitat and water quality. And  
12 Panel 14 will be going into more detail about how we do  
13 that and the environmental guidelines we have developed  
14 for access roads and water crossings.

15 Similarly with landings, they can create  
16 significant disturbance and should not be located in  
17 areas of concern.

18 In terms of harvesting, a couple of points  
19 to mention under that section. In some cases it may be  
20 permissible or acceptable to carry out limited  
21 harvesting within an area of concern. This may prevent  
22 the deterioration of the forest within the area of  
23 concern, thereby maintaining the benefits the forest  
24 provides.

25 Now, if done with extreme care, the



1 removal of single trees or small groups of trees, which  
2 we call selection cutting, may cause little  
3 disturbance. We also have some -- the guidelines also  
4 talk about that cutting should not occur between the  
5 shoreline and nearby roads and shoreland vegetation  
6 must be maintained to protect fish habitat from  
7 sedimentation.

8 Q. I understand that all of these  
9 sections here, particularly in relation to harvesting  
10 and potential effects and how they are dealt with, will  
11 be dealt with in detail in Panel No. 10?

12 A. That's correct. And basically in  
13 terms of shelterwood or clear cutting is carried out in  
14 an area of concern it may be necessary to restrict the  
15 size of cuts to avoid significant impacts. The  
16 guidelines on page 12 talk about no more than 50 per  
17 cent of the shoreline of lakes or 50 per cent of the  
18 length of streams should be cut by these methods.

19 Again, this is where we don't have any  
20 critical fish habitat, but we are concerned with  
21 maintaining water quality and any cutting should occur,  
22 where feasible, in non-contiguous blocks or strips.

23 Mechanical site preparation is another  
24 activity or operation within the area of concern and  
25 the degree of disturbance by mechanical site

1 preparation varies with site conditions as well as with  
2 equipment and methods employed. Again, this is  
3 discussed in later panels.

4 Q. In Panel No. 11?

5 A. In Panel No. 11.

6 Then finally we have definitions and I  
7 will just draw the Board's attention to the top  
8 right-hand corner of page 12 where wetlands are defined  
9 as areas of shallow water, characterized by the  
10 presence of aquatic vegetation, and which provide  
11 spawning or nursery habitat for fish.

12 In the second last paragraph, which I  
13 feel is important, that some tributaries to cold water  
14 lakes may not be inhabited by salmonids. In other  
15 words, they don't have a cold water fish community  
16 there, but they are critical sources of water to these  
17 cold water lakes and, therefore, such tributaries  
18 should receive the same protection as do streams  
19 inhabited by salmonids.

20 In the guidelines, references to cold  
21 water streams; in other words, the most stringent  
22 protection include these tributaries.

23 MR. MARTEL: Can I ask a question?  
24 Wetlands in southern Ontario, do they have the same  
25 definition; in other words, you have to have nursery

1 habitat for fish for wetlands?

2 MR. WARD: No, they aren't. These  
3 guidelines are just specifically the definition we use  
4 for fish habitat.

5 MR. MARTEL: But you have a different  
6 definition then for wetlands than, let's say, the  
7 Wetland's League would have or some organization?

8 MR. WARD: Well, they include the same  
9 wetlands that we have in these guidelines. In terms of  
10 their fish spawning nursery areas, their Level 1  
11 wetland in terms of their classification system in  
12 southern Ontario.

13 I don't know whether -- does that answer  
14 your question?

15 MR. MARTEL: I am just wondering -- not  
16 quite. I didn't think that wetlands included  
17 necessarily nursery habitat for fish.

18 MR. WARD: Yes, I think the -- you know,  
19 the wetlands in southern Ontario, like anything  
20 connected to rivers or lakes down there, are going to  
21 be a potential for spawning areas and nursery areas for  
22 fish and they are ones that are also threatened by  
23 urbanization or agricultural drainage or whatever.

24 In actual fact, I know of a document  
25 produced several years back that evaluated the wetlands



1 along the Great Lakes and there has always been a lot  
2 of attention directed to wetlands from a wildlife point  
3 of view in terms of water fowl areas or beaver or  
4 muskrat. And a lot of people don't see fish that are  
5 under the water, they are not as visible and,  
6 therefore, you don't realize the importance of these  
7 wetlands to fish.

8 But I know some of the papers that were  
9 produced in this report indicated that the value of  
10 those wetlands are probably -- the fisheries values  
11 probably outweighed all other values that were -- that  
12 the wetlands had in terms of water purity --  
13 purification, wildlife habitat as well.

14 There is a lot of value because they are  
15 very important for the sport fisheries and the  
16 commercial fisheries on Great Lakes to have those  
17 spawning, nursery, and feeding areas to maintain that  
18 productivity in the Great Lakes systems.

19 MR. MARTEL: Right, thank you.

20 MR. FREIDIN: I just point out, Mr.  
21 Martel, that on page 12 the definition, it indicates  
22 for the purposes of these guidelines wetlands are  
23 defined as areas of shallow water, et cetera.

24 So the guidelines - and there will be  
25 some evidence of this later - the guideline's which deal

1 with the protection of fish habitat have defined  
2 wetlands in that sense because the habitat of fish  
3 isn't the only subject matter being dealt with here  
4 along with water quality.

5 MR. MARTEL: Fine, thank you.

6 THE CHAIRMAN: Mr. Freidin -- Mr. Ward,  
7 are you finished with these guidelines for the moment?

8 MR. WARD: Yes.

9 THE CHAIRMAN: I am not sure if we got  
10 into a discussion of this earlier in the hearing, I  
11 would have to check my notes, but what is the position  
12 of the guidelines, in your view, legally in terms of  
13 its binding effect?

14 I am not questioning that necessarily on  
15 the Ministry, but with respect to the Board having to  
16 follow, in its decision, whatever the guidelines may or  
17 may not say with respect to matters which were before  
18 us.

19 I cannot remember from the beginning,  
20 frankly, whether we sort of discussed this area in  
21 terms of what effect guidelines have. It was always my  
22 impression that the Board has to take account of the  
23 guidelines but does not slavishly -- is not slavishly  
24 obliged to follow them along the lines of the  
25 Innisfil/Barrie annexation case, if all of you are

1 familiar with that case, recall what it said.

2 MR. FREIDIN: I had indicated that it is  
3 not the position of the Ministry that these guidelines,  
4 you know, can't be visited and discussed and evidence  
5 be given as to the propriety of any of the particular  
6 provisions in them.

7 THE CHAIRMAN: So you would follow along  
8 with the view expressed in the Barrie annexation case  
9 in terms of what the Board's jurisdiction would be to  
10 consider the guidelines, but not necessarily be obliged  
11 to follow them, should it feel that a deviation is  
12 warranted?

13 I am sure we will get into this in  
14 argument later on. The reason I raise it at this time  
15 is counsel may be interested to learn that there is a  
16 recent case called the Brennan versus the Minister of  
17 Municipal Affairs which I believe is reported in 1988,  
18 63 Ontario Reports, 2nd, at page 236.

19 That although I have not read this case,  
20 it has been brought to my attention that it seems to be  
21 somewhat at odds with the Barrie annexation case, and  
22 it may be something that, at some later date, we may  
23 have to discuss in more detail.

24 MR. FREIDIN: Mr. Chairman, I think that  
25 these guidelines are somewhat different than the



1 guidelines or the subject matter which was discussed in  
2 the Barrie annexation case.

3 I mean, those guideliness were  
4 guidelines -- or there was a policy which was approved  
5 by Cabinet, it was a government policy. These  
6 documents is a document which in fact -- it is referred  
7 to as policy according to the evidence of Mr. Douglas  
8 in Panel No. 1, but it is a policy which is approved at  
9 the Deputy Minister level. They are guidelines which  
10 are used --

11 THE CHAIRMAN: It is not government  
12 policy in the sense that it has Cabinet sanction?

13 MR. FREIDIN: That is correct.

14 THE CHAIRMAN: It is Ministry policy in .  
15 the sense that, as far as MNR is concerned, it is  
16 binding on MNR employees?

17 MR. FREIDIN: The same comment goes for  
18 Exhibit 304. I would just indicate that they are  
19 guidelines and the Ministry will be stressing in their  
20 evidence that that's what they are and we will explain  
21 what that means.

22 And it would be the Ministry's position  
23 that at the end of the day that the guidelines should  
24 not be altered by the Board unless the Board was  
25 convinced that a provision in the guideline was, in all

1       circumstances, unacceptable; in other words, there is  
2       no situation in which the direction given was  
3       appropriate. In that case, I think that it might be  
4       appropriate for the Board to take hold of that  
5       particular matter and deal with it, but if it is a  
6       general matter...

7                   THE CHAIRMAN: Well, the reason I raise  
8       it is it may well be that parties in opposition, as we  
9       go through the rest of the case, feel that some  
10      provisions of the guidelines, for instance, are not  
11      stringent enough or are not covered by the guideline or  
12      something like that.

13                   And I was just wondering what the  
14      position of Ministry was if the Board felt that in a  
15      particular case that that was so, the guidelines should  
16      be altered, for instance, because it have not stringent  
17      enough. If that were the case, what is the Board's  
18      position if it were, for instance, Cabinet policy? I  
19      understand what you are saying, it is not something --

20                   MR. FREIDIN: Well, let's not deal with  
21      the latter one. I think in relation to these  
22      particular documents that has given rise to your  
23      comments, we always understood that these documents,  
24      you know, could be the subject matter of terms or  
25      conditions or, you know, suggestions by the Board. And

1 I think, you know, what the ultimate position of the  
2 Ministry would be on any suggested changes by other.  
3 parties would depend on what the submissions were at  
4 that time.

5 THE CHAIRMAN: Okay, thank you.

6 MS. SWENARCHUK: Mr. Chairman, can I  
7 clarify one point. You referred to the guidelines  
8 being, I believe you said, mandatory for MNR employees.  
9 I don't remember the exact words you used.

10 I wonder if that's the position of the  
11 department. They are called guidelines and they are  
12 not called directives; they are not specific orders.  
13 That are to be applied, I understood, in a  
14 discretionary way. This may be the time to discuss  
15 that.

16 THE CHAIRMAN: Well, it was my  
17 understanding that they have the sanction of the Deputy  
18 Minister and they are, in effect, policy for the  
19 Ministry and the Ministry employees would be obliged to  
20 follow them within the discretionary bounds set out in  
21 the guidelines themselves.

22 Is that not the case?

23 MR. FREIDIN: I think that's accurate.  
24 Perhaps the best way to deal with the concern raised is  
25 just ask Mr. Clark what is meant in the EA Document



1       itself and in the evidence that has been led to date  
2       that says in relation to these types of guidelines,  
3       this guideline, the moose guidelines, tourism  
4       guidelines, what does it mean when you say that the use  
5       of those guidelines is mandatory?

6                   MR. CLARK: Well, I think this gets back  
7       to the kind of decision-making I was talking about  
8       yesterday and which will be dealt with in more detail  
9       in Panel 8.

10                   But we say that the moose guidelines,  
11       they are called Timber Management Guidelines for the  
12       Provision of Moose Habitat, Guidelines for the  
13       Protection of Fish Habitat and Tourism have Deputy  
14       Minister approval and the use of them is mandatory.

15                   Now, what that means, for example from  
16       the point of view of the district manager, is that it  
17       is his staff -- it is mandatory that his staff use  
18       those in applying prescriptions, if you want, or making  
19       recommendations on how to protect or enhance critical,  
20       for example, fish habitat or moose habitat.

21                   Now, I think the point -- Mr. Ward made a  
22       point - and Nelville you may want to reference this -  
23       where it was very specific and it said: This is what  
24       you do in this particular situation, but it also noted  
25       that in other instances you might deviate if, in doing

1 so, you were in fact achieving the objective of  
2 protecting or enhancing fish habitat.

3 Neville, maybe you can just make reference  
4 to that one section that you were...

5 THE CHAIRMAN: For instance, Mr. Ward, if  
6 you just took, as an example on page 1 of the  
7 guidelines, the green sheets. In the second paragraph  
8 you have a bunch of percentages regarding slope and  
9 then you have got a sentence that says:

10 "Areas of concern should be measured from  
11 the high water mark. The wood specified  
12 apply to each side of a stream."

13 And then in the next sentence, it says:

14 "The above widths of areas of concern are  
15 for general use, where better information  
16 is available they may be modified."

17 Okay. There is a discretion in the  
18 second sentence, but in the first sentence it says:

19 "Areas of concern should be measured from  
20 the high water mark and the wood  
21 specified apply to each side of the  
22 stream."

23 There would be no discretion in terms of  
24 Ministry staff to do otherwise; would that not be the  
25 case?

1 MR. WARD: That's correct.

2 THE CHAIRMAN: That would be absolutely  
3 binding on them period, and if they married the  
4 measures of areas of concern from, say, the low water  
5 mark, that would be in breach of the guideline?

6 MR. WARD: That's correct.

7 MR. FREIDIN: Q. And there are other --  
8 although there may not be a whole host of them, there  
9 are in fact, I understand it, other situations where  
10 the guidelines say: If you find yourself in this  
11 situation, then you must do this, or you must not do  
12 that and it is mandatory in respect of that particular  
13 described situation; is that correct?

14 MR. WARD: Yes.

15 Q. Mr. Ward, perhaps you could direct  
16 your attention then to Exhibit 304 which is the policy  
17 in relation to the Guidelines for the Protection of  
18 Fish Habitat and describe what this document -- the  
19 role of this document is and perhaps highlight some of  
20 its important sections?

21 MR. WARD: A. Okay. The purpose of this  
22 policy is to provide direction concerning the use of  
23 the guidelines to protect water quality and fish  
24 habitat during the planning and implementation of  
25 timber management.



1                   And if we go to page 2 of the guidelines,  
2           I want to just point out a couple of items. The  
3           guidelines shall be applied to the following waters:

4                   All headwater lakes, lakes of surface  
5           area equal to or greater than 10 hectares which have a  
6           permanent surface drainage to a lake or river system;  
7           lakes which possess or may possess significant  
8           fisheries value; all streams which appear as permanent  
9           streams on a topographic map of scale 1:50,000, and  
10          intermittent streams which provide spawning habitat for  
11          fish.

12                   And we have -- the policy also tells us  
13          the minimum information requirements required to  
14          implement the guidelines. There are three major areas:  
15          We need to know the fish species that are present, we  
16          need to know the location of the critical fish  
17          habitats - and I just mentioned that they were defined  
18          in the guidelines - and we need to know the slope of  
19          the shoreline areas.

20                   And normally this information is obtained  
21          through surveys conducted in the manual -- or described  
22          in the Manual Instructions for Aquatic Habitat  
23          Inventory Surveys which is the manual I talked about  
24          yesterday. And then we mentioned the acceptable  
25          methods for collecting the minimum information required

1 by the guidelines for fish species and for critical  
2 fish habitats and, going on to page 3, on the slope of  
3 the shoreline areas.

4 Q. And I understand that we will be  
5 going back in your evidence and dealing with that  
6 particular section of the policy?

7 A. Right. That's correct.

8 And in terms of when we talk the policy,  
9 we also talk about use of the guidelines and where  
10 waters do not contain fish habitat requirement  
11 protection, the guidelines shall be used to protect  
12 water quality as follows, that is toward the bottom of  
13 page 3 :

14 "Headwater lakes to be protected in the  
15 same manner as lake trout lakes; other  
16 lakes to be protected in the same manner  
17 as other lakes; and streams to be  
18 protected in the same manner as cool  
19 water and warm water streams."

20 Is the guidelines. Also, the policy  
21 talks about, if we do not have insufficient information  
22 to meet these minimum requirements, we protect fish  
23 habitat in the following manner; that if we don't have  
24 any slope information, we have a 90-metre area of  
25 concern or a buffer' around the lakes.

1 Q. That is an example of one of those  
2 mandatory requirements that you mentioned?

3 A. That's correct. If we have some  
4 slope information but we don't have information, for  
5 example, on critical habitats or where they are  
6 located, then the area of concern or the buffer around  
7 a lake is between 30 to 90 metres in width.

8 And basically, in terms of timber  
9 harvesting with areas of concern, they are restricted  
10 to the following options: Either there is no  
11 harvesting; in other words, we have a reserve, or  
12 selection cutting where it can be demonstrated that  
13 fish habitat will be protected; in other words, it will  
14 act as a buffer but it is not strictly a timber  
15 reserve.

16 MRS. KOVEN: Excuse me. In the first two  
17 instances of the area of concern, the 90 metre and the  
18 30 to 90 metre buffers.

19 MR. WARD: Yes.

20 MRS. KOVEN: Cutting can take place  
21 within that buffer?

22 MR. WARD: In terms of selection cutting,  
23 yes. Where you remove a single tree, like, you know, a  
24 large white pine or something like that or a small  
25 group of trees, but we want to see that demonstrated



1       that it doesn't damage fish habitat.

2               In other words, we like to see that kind  
3       of operation carried out on a lake or lakeshore where  
4       there isn't any critical fish habitat and if the  
5       operator can demonstrate to us that, you know, he's not  
6       making a mess out there and can cleanly remove those  
7       trees, then we would allow him to do it in areas where  
8       we have a reserve.

9               MR. FREIDIN:  Q.  Now, Mr. Ward, I want  
10      you to go back to the minimum information requirements  
11      which are found at page 2 of the policy document, and I  
12      would like to ask you a few questions about each of the  
13      subject matters about which there are minimum  
14      information requirements, and the first one being fish  
15      species present.

16              Can you advise me:  Do you do an  
17      inventory of all fish species in the lake and, if you  
18      don't, why don't you when you are trying to determine  
19      the fish species present for the purposes of applying  
20      these guidelines?

21              MR. WARD:  A.  Well, the objective of our  
22      aquatic habitat inventory program is to collect all the  
23      fish species that are present.  We are not looking for  
24      quantity of fish being collected, but we want to at  
25      least get a single specimen from each one.

1           As you can imagine, it is difficult to  
2     sample fish habitat and make sure that you have all the  
3     fish species that are present in the lake. They can  
4     vary from deep water to shallow water from different  
5     parts of the lake. So the attempt is to try and  
6     collect them all, but not in all cases do we.

7           I don't think in terms of the guidelines  
8     in protecting those lakes from timber management  
9     activities that it is necessary that we have all  
10    species, but as long as we get the major species that  
11    are present, because basically if you are looking at  
12    the types of critical habitats that the major species  
13    need in terms of spawning or feeding areas or nursery  
14    areas, we are basically protecting all the wetland  
15    areas on the lakes, we are protecting basically all the  
16    rock/rubble, cobble/gravel areas in the lakes that have  
17    the interstitial spaces that are required for fish to  
18    spawn and lay their eggs in.

19           When you look at the critical habitat  
20    requirements for all 118 fish species that are  
21    listed -- are in the area of the undertaking, over 95  
22    per cent of those fish critical habitats in terms of  
23    spawning habitat is either going to be protected by  
24    applying reserves or buffers next to aquatic vegetation  
25    or to gravel/rock/rubble areas.

1                   So we do feel, even if we don't collect  
2                   the fish species, we will, by protecting the critical  
3                   habitats of the major species, be protecting critical  
4                   habitats for the minor species.

5                   Q. And could you just comment briefly on  
6                   the significance of the relationship between the major  
7                   species? You say if you protect the habitat for the  
8                   major species, you will be protecting it for the other  
9                   species.

10                  A. Well, the major species that I am  
11                  talking about are the fish like walleye and pike, lake  
12                  trout, white fish, bass, brook trout, fish mainly of  
13                  interest to man, fish that are normally subjected to  
14                  exploitation or harvest stress by man and, therefore,  
15                  we want to minimize any other stresses that they have  
16                  to handle, for example, perturbations to their habitat;  
17                  we want to maintain their habitat so they can handle  
18                  exploitation stress more readily.

19                  The minor species won't necessarily be  
20                  subject to exploitation stress. They should be able --  
21                  even if we weren't protecting habitat, they should be  
22                  able to handle some of the habitat perturbations, but I  
23                  don't think this is going to occur in very many cases.

24                  Q. Can you comment about the lower  
25                  organisms, invertebrates, that may be present in the



1 lake? Do you collect information on them and, if not,  
2 why not, for the purposes again of protecting the  
3 fisheries resource from potential effects of timber  
4 management?

5 A. Generally in lake surveys we don't  
6 collect benthic organisms, mainly because of the  
7 difficulty in sampling. I mentioned earlier how it is  
8 difficult to collect all the fish species that are  
9 present with the types of gear that you are allowed to  
10 use and sometimes it is hard to get fish out of  
11 rock/rubble areas, such fish as sculpins that may be  
12 hiding in there. The same problems are even more  
13 complicated with trying to collect benthic organisms  
14 that are hiding in the bottom muds or in the bottom  
15 rocks and gravels.

16 So basically in lake surveys we don't --  
17 in terms of our stream and river surveys, we do collect  
18 benthic organisms, especially on stream surveys. We  
19 are talking about a smaller area to sample and normally  
20 we can wade in the area and it is easier enough to  
21 disturb bottom gravels with server traps to collect  
22 benthic invertebrates which I describe in my evidence.

23 Q. Thank you. Perhaps you could turn to  
24 the subject matter of the method of collecting minimum  
25 information in relation to these three particular

1 matters.

2 Again, if we could turn to the policy in  
3 paragraph No. 4 under the heading Minimum Information  
4 Requirements, this is at page 2 of the policy, the last  
5 item on the page. It describes acceptable methods for  
6 collecting minimum information required by the  
7 guidelines.

8 Can you advise as to whether the methods  
9 which are described for collecting information on fish  
10 species, as contained in paragraph No. 4, provide the  
11 same quality of information about fish species present  
12 that you would obtain through following the provisions  
13 of the manual, the aquatic habitat inventory survey  
14 manual? \*

15 A. Yes, they do.

16 Q. Could you comment on the third item  
17 under fish species, verified presence of lake trout.  
18 Can you indicate why that is an acceptable method of  
19 collecting minimum information in relation to fish  
20 species present?

21 A. Well, in terms of the lake survey  
22 manual it does mention that the survey crew should talk  
23 to anglers and find out what species of fish they have  
24 caught in the lake because they may have difficulty  
25 catching some of them.

1                   And when we talk about verified presence  
2 of lake trout, we are talking about anglers or somebody  
3 telling us in our timber management planning open  
4 houses or in other areas, discussions with local  
5 people, that they have caught lake trout in certain  
6 lakes.

7                   And the reason we are zeroing in on lake  
8 trout is that if lake trout are there then we implement  
9 the most stringent requirements under the fish habitat  
10 guidelines in terms of protection; we have a continuous  
11 shoreline reserve around those lakes and the  
12 tributaries running into those lakes. So, therefore,  
13 we are protecting all the critical habitats that would  
14 be there. So we don't necessarily have to go out there  
15 and survey that lake to identify critical habitats  
16 because we have a standing shoreline of trees around  
17 that lake.

18                  Q. In terms of the methods for  
19 collecting information on critical fish habitat, which  
20 you will find on the next page, can you indicate the  
21 type of information which is obtained through the  
22 shoreline cruises that are referred to and also  
23 indicate how that information is recorded?

24                  A. Okay. Basically, the shoreline  
25 cruise or the river -- it is called a river cruise on



1 rivers is basically you go in a boat, we have two  
2 people in the boat that are recording on a map the  
3 sub-strait types that are located along the shoreline  
4 and which is the area that is used for spawning.

5 Q. What do you mean by sub-strait types?

6 A. Sub-strait types, I mean the bottom  
7 materials and we have in the manual ten categories of  
8 bottom sub-strait types which I will explain to the  
9 Board in terms of when I go through some of the maps  
10 and the kind of mapping that we do for shoreline  
11 cruising.

12 Basically they go around the lake solely  
13 mapping the bottom sub-straits, measuring the slope of  
14 the shoreline with a clinometer and collecting  
15 information like that. If there are any cabins on the  
16 lake, that kind of information also gets recorded on a  
17 shoreline cruise.

18 Q. And in addition to sub-strait types,  
19 what other sort of information do you obtain and which  
20 must be the subject matter of the habitat mapping which  
21 is referred to in relation to critical fish habitat?

22 A. Well, besides the bottom materials,  
23 we also ask the crews to collect information on aquatic  
24 vegetation, where it is located, and basically whether  
25 it is emergent, submergent or floating vegetation is

1 the requirement in the manual.

2 But, as I will show the Board later, some  
3 districts ask the crews to collect more information and  
4 actually get some information on the different species  
5 that are actually present in that aquatic vegetation.

6 Q. Perhaps we could go to those maps  
7 right now, Mr. Ward, and you could indicate how in fact  
8 the information which is obtained in relation to  
9 critical fish habitat is in fact conveyed. All right?

10 A. All right.

11 Q. Now, when you are doing that perhaps  
12 you could indicate whether, from your point of view as  
13 a fisheries biologist, whether the information is  
14 collected in a way and recorded in a way which is  
15 useful for you in timber management planning?

16 THE CHAIRMAN: Bring it out a bit more  
17 forward, please.

18 MR. WARD: Would you like it out in  
19 front?

20 THE CHAIRMAN: No, we want everyone in  
21 the rest of the room to be able to see it as well.

22 MR. WARD: I basically have brought three  
23 maps as exhibits. This is...

24 MR. FREIDIN: I am just wondering, Mr.  
25 Chairman, again, I am not even sure whether you can see

1 that.

2 THE CHAIRMAN: Well, we cannot read the  
3 writing but we can see the...

4 MR. WARD: I will try to explain in  
5 detail some of the information that is collected and  
6 then they will have an opportunity to look at it.

7 The first map that I have up here  
8 indicates the bottom contours, that is collected by  
9 echo-sounding, and basically the crews do trasects back  
10 and forth and map where the various depths of the lake  
11 are.

12 We use this information for determining  
13 mean depths of lakes and getting some idea of the  
14 productivity that can come out of a lake, normally a  
15 shallower lake is more productive than a deeper one.

16 MR. FREIDIN: Q. Mr. Ward, just before  
17 you continue the map that you are showing there, is  
18 that a map which only shows the minimum information or  
19 was this map prepared in relation to a lake survey?

20 MR. WARD: A. This is for a lake survey,  
21 this is not related to the minimum information for  
22 timber management planning purposes; it is information  
23 we collect on standard a lake survey and that we use  
24 for a variety of purposes.

25 Q. Thank you.



1           A. That's why I was explaining a little  
2 bit about you know, the depths, mean depth value that  
3 we collect; we don't need that for timber management  
4 planning purposes necessarily.

5           They have the contours recorded on the  
6 lake that one that goes 1 metre, 2 metre, 4 metres, and  
7 6 metres in depth. The interesting thing from a  
8 critical habitat identification point of view here is  
9 that shoal areas that are offshore are found through  
10 this process and some of them can be potential spawning  
11 areas and, as such, are of concern and indicated as a  
12 critical fish habitat.

13           The other point I would like to mention  
14 on this kind of map is that we indicate the inflowing  
15 streams and we have collected some information on the  
16 tributaries to these lakes. Basically we calculate the  
17 flow. If the flow is not measureable, we indicate it  
18 is not measureable; discharge, if it is too great to  
19 measure, in other words, into a river system we  
20 indicate it is too great to measure, but in many cases  
21 we can calculate the flow.

22           And that requires going upstream some  
23 distance, determining the width of the stream, the  
24 depth of it, as well as indicating if there are any  
25 rapids, beaver dams and, in some cases, districts do

1 some mapping of the tributary. So this is what I  
2 mentioned yesterday, some of the additional information  
3 that we would get on streams in the area of the  
4 undertaking but wouldn't be registered as a standard  
5 stream survey. So that is the point I wanted to make  
6 here.

7 THE CHAIRMAN: Do you want to mark that  
8 please, Exhibit 305.

9 ---EXHIBIT NO. 305: Bottom contour map.

10 MR. WARD: This is again a map that  
11 indicates the bottom shoreline in terms of the  
12 shoreline cruise, the sub-strait types. It is  
13 indicated on here that we have ten types, which I will  
14 just read out.

15 We indicate boulder, which is basically  
16 rocks larger than ten inches in diameter; we have  
17 bedrock; we indicate clay; they indicate detritus; they  
18 indicate gravel which is between an eighth and three  
19 inches in diameter; we indicate muck, marrow rubble  
20 which is normally -- which is between three and ten  
21 inches in diameter and that is normally the size of  
22 rock that is utilized or preferred by fish for  
23 spawning.

24 In terms of my experience I have seen in  
25 terms of whether it is in rapids or in shoal areas,

1 that rock that is between three and ten inches in  
2 diameter is preferred spawning sub-strait and it is  
3 actually the kind of rock that we try to get from  
4 gravel pits when we are rehabilitating or enhancing  
5 spawning areas, we actually bring in rocks that size  
6 and deposit that on areas where fish are spawning or  
7 could be spawning to create spawning habitat.

8 Sand and silt are sort of the ten  
9 categories. The district as well has indicated they  
10 collect other information about the location of logs  
11 which can be used for cover and spawning areas for some  
12 minnow species spawn or lay their eggs in the side of  
13 logs. They also indicate dropoffs and shelves which is  
14 additional information beyond what is recorded in the  
15 manual, but the district biologist finds that  
16 information useful and uses it for his purposes beyond  
17 just timber management planning.

18 As well the district -- the crew has  
19 collected information on the types of trees that are  
20 present on the shoreline. Again, it is not a forest  
21 resources inventory map, we are not talking about  
22 percentages, but it gives the district biologist some  
23 idea of the trees that are present and also some of the  
24 understorey that is indicated, such as whether there is  
25 junipers available or moss or lichens that are present



1 along the shoreline. And that has more implications  
2 for wildlife purposes than for fish purposes.

3 Q. Now, that particular map that you are  
4 showing, is that again a map which was prepared as a  
5 result of doing a lake survey?

6 A. That's correct, yes.

7 Q. Is that information that you referred  
8 to about the type of trees that are on the shoreline,  
9 is that information which is required information when  
10 one does a lake survey?

11 A. No. All that is required in the  
12 manual is that we indicate whether there is coniferous  
13 trees, deciduous trees or whether there is a mix of  
14 coniferous deciduous trees. We normally don't ask  
15 crews to identify tree species. But depending on the  
16 district and the staff and the training they give them  
17 locally, there are crews that go and collect that kind  
18 of information.

19 Q. Is there any particular reason that  
20 that information was collected in the case of that  
21 particular lake survey?

22 A. Well, as I indicated the district  
23 biologist has other uses for that kind of information  
24 in terms of wildlife purposes or some other indications  
25 like that, you know, furbearers or whatever, may refer

1 to certain types of trees or terms of lichens, you  
2 know, if you are dealing with caribou or something like  
3 that it may be of interest to know that that is  
4 present.

5 Q. Okay.

6 THE CHAIRMAN: Would you mark that  
7 Exhibit 306, please?

8 MR. FREIDIN: I am just wondering whether  
9 that exhibit, Mr. Chairman, and the exhibit before it  
10 should be given a name.

11 THE CHAIRMAN: Other than just a lake  
12 map?

13 MR. FREIDIN: Yes. We may have a number  
14 of maps throughout the --

15 MR. WARD: Don't ask me to pronounce this  
16 lake name, Mr. Chairman.

17 THE CHAIRMAN: Well, what would you call  
18 Exhibit 305?

19 MR. FREIDIN: 305 was the one before that  
20 Mr. Ward.

21 MR. WARD: I would like to call that the  
22 bottom contour map.

23 THE CHAIRMAN: Very well.

24 MR. WARD: And this can be called the  
25 bottom sub-strait map.

1       ---EXHIBIT NO. 306: Bottom sub-strait map.

2                   MR. FREIDIN: I am just wondering.

3                   Q. Is there a specific lake referred to  
4 on Exhibit 305?

5                   MR. WARD: A. Yes.

6                   Q. Could you spell it?

7                   A. I can spell it. Don't ask me to  
8 pronounce it. It's K-a-k-a-b-i-k-i-t-c-h-i-w-a-n

9                   Q. And that was 305; was it?

10                  A. Pardon me?

11                  Q. That was Exhibit 305?

12                  A. All three maps are the same lake.

13                  Q. Thank you.

14                  A. This is Map No. 3 I am looking at  
15 now.

16                  THE CHAIRMAN: You may as well mark that  
17 one Exhibit 307.

18                  MR. WARD: I would call that the  
19 shoreline slope map.

20                  THE CHAIRMAN: Thank you.

21       ---EXHIBIT NO. 307: Shoreline slope map.

22                  MR. WARD: There are two points that I  
23 want to indicate here is that the crews do record  
24 shoreline slopes. We have a little symbol of an arrow  
25 and if it is steeper you put another -- a dash through



1 it.

2 Basically we go the four categories of  
3 slope: 0-8 degrees, which is a single line, and then  
4 9-17 degrees slope, 18-24, and then 25-31 degrees which  
5 is consistent with the slopes mentioned in the fish  
6 habitat guidelines and, therefore, if you have critical  
7 habitat next to that kind of slope, it tells you the  
8 width of the buffer that is required to protect that  
9 critical habitat from timber management activities.

10 The other point I would like to mention  
11 as well on this map is that we map aquatic vegetation.  
12 They indicate the extent of the wetlands that are on  
13 these lakes and, in this case, as I said earlier, the  
14 manual only asks the crew to identify whether it is  
15 emergent vegetation, whether it is aquatic vegetation  
16 that floats on the surface, or whether it is  
17 submergent; in other words, it is below the water  
18 surface.

19 The district here has some of the major  
20 species of aquatic plants that are found in the Kenora  
21 area and, for example, they have indicated there are  
22 cattails present or there are pond lilies present and  
23 that information is also useful for fisheries purposes.

24 I know for pike spawning, for example, if  
25 you have cattails in a marsh, chances are it won't be a

1 pike spawning wetland, they seem to avoid that. But  
2 ones that have sedges present are normally a prime area  
3 for pick spawning.

4 So we use that in terms of taking this  
5 kind of information that is collected by a lake survey  
6 cruise and getting -- making a determination of how  
7 important that area would be to the fish that are  
8 present in the lake.

9 Q. Now, Mr. Ward, the three maps have  
10 indicated how information obtained on a lake survey is  
11 recorded on a map.

12 The minimum information requirements that  
13 we have referred to indicate that habitat mapping is  
14 required in relation to critical fish habitat. How  
15 does the mapping of the critical fish habitat on the  
16 maps that you have just gone through, the three maps,  
17 compare to the type of mapping which would be produced  
18 or required to be produced under the minimum  
19 information requirement referred to in the policy?

20 A. Well, this is the kind of mapping  
21 that we would expect in terms of mapping the location  
22 of the aquatic vegetation, mapping the location of  
23 rock/rubble sites, for example.

24 I mean, the artwork may vary from  
25 district to district. I mean, in this case, it is

1 quite good artwork, but others it may be penciled in  
2 information on the actual field map that is collected  
3 in the field, but it would have the same kind of  
4 information.

5 What I am finding now that more and more  
6 districts are going to this level or this fine style of  
7 drawing so that people -- so that the biologists can  
8 read what the crew has written. In other words, I know  
9 on this lake, for example, it took the crew four days  
10 to do the complete lake survey this summer and they did  
11 it from May 24th to 26th in 1988 and it took two days  
12 back in the office to prepare the forms and send off  
13 their fish samples for identification and to draw out  
14 the shoreline cruise maps in this manner.

15 So that is, you know, what I expect to  
16 see districts using.

17 Q. In relation to the subject matters  
18 which would have to be identified for critical fish  
19 habitat, are there things on that map in relation to  
20 critical fish habitat which would not be required  
21 information to have under the policy?

22 What I am concerned about is: I want the  
23 Board or anybody else to go up to those maps and be  
24 able to discern what information is the minimum  
25 requirement, I guess, in relation to mapping critical



1 fish habitat and what is in fact additional as to what  
2 the standard is sort of across the province.

3 A. Basically I have sort of indicated in  
4 green and highlighted the kind of information that I  
5 would consider useful information in determining  
6 critical fish habitat.

7 In other words, in terms of the minimum  
8 lake information, in terms of slopes, in terms of  
9 location, aquatic vegetation, in terms of the  
10 rock/rubble or the bottom sub-straits that are present,  
11 that type of thing, but there are other -- lots of  
12 other information that we wouldn't necessarily need for  
13 the minimum information requirements such as the  
14 location of cabins and that type of thing.

15 Q. And the description of the  
16 vegetation, whether it was submergent or emergent, you  
17 said it showed that, but it also indicated actual  
18 species or different types of aquatic vegetation?

19 A. Yes. That is not a requirement under  
20 the manual either.

21 Q. The specific --

22 A. We protect all aquatic vegetation.  
23 It doesn't matter whether it is made of cattails, or  
24 sedges or whatever. But, as I say, it is little bit  
25 more information that the biologist can use for his

1 fisheries management purposes.

2 Q. Mr. McNicol, in terms of your  
3 involvement in a timber management planning process as  
4 a wildlife biologist would any of the information which  
5 appeared on those maps which were prepared for  
6 fisheries management purposes be information which  
7 would be useful to you in terms of having a meaningful  
8 input into timber management planning?

9 MR. McNICOL: A. Yes, indeed. The  
10 information concerning aquatic vegetation, for  
11 instance, along the shoreline -- excuse me.

12 Information concerning aquatic vegetation  
13 around the shoreline is very important from our  
14 perspective. This often indicates areas moose will be  
15 utilizing for aquatic feeding, as well as a number of  
16 other wildlife species.

17 These types of habitats do support --  
18 because of their shallow nature and vegetation  
19 structure, there are a number of different wildlife  
20 species; this would be a popular area for water fowl.

21 In the conducting of these surveys, we  
22 oftentimes get incidental information from these cruise  
23 that is very useful. Most often this incidental  
24 information will come in the form of bald eagle nesting  
25 sites, osprey nesting, heron rookeries. This type of

1 information again is information that is very useful  
2 for our purposes.

3 Q. So that when we see a map of those  
4 locations of heron rookeries, bald eagles nests and  
5 ospreys that you work with, some of that information  
6 could very well have been provided by another program  
7 within the Ministry?

8 A. Indeed it has and we will be speaking  
9 to that later.

10 THE CHAIRMAN: Mr. Freidin, I wonder if I  
11 might ask the panel: Is the physical setup such that  
12 one of these maps is prepared for the district and then  
13 it is available to everybody, or are copies sent to  
14 each separate branch or area of concern within the  
15 Ministry so that the wildlife section has their own  
16 copy, the fisheries has their own copy, the district  
17 office has their own copy?

18 I mean, how physically is this set up?  
19 Is it one copy for everybody or do you make multiple  
20 copies or how does it work?

21 MR. McNICOL: Generally for each program  
22 fisheries or wildlife there is an identified  
23 individual, usually the biologist. There can be, in  
24 some cases, two biologists; a wildlife and a fisheries  
25 biologist in the district. But those individuals are



1 recognized as the individuals that are the keepers, if  
2 you will, of the map.

3 In the case - we will be dealing with  
4 this a little later - but in the case of those nesting  
5 sites, since the nesting sites for eagle, heron and  
6 osprey. We have a map, I have a map a wildlife  
7 biologist where all of that information is collected.

8 All the individuals in the other services  
9 are aware of that map. Indeed we have forms that these  
10 individuals or the field people take out in the field  
11 with them because we ask them information concerning  
12 anything they see with regard to these particularly  
13 sensitive sites.

14 So it is recognized that there is a  
15 repository for that information, it is recognized in  
16 the district context who that person is and that's  
17 where the reports are brought and they are placed on a  
18 map.

19 THE CHAIRMAN: Thank you.

20 MR. FREIDIN: Q. Mr. Pyzer, could you  
21 comment?

22 MR. PYZER: A. I think one important  
23 other point is that the information is recorded on  
24 mylars, on plastic sheets if you will, and while the  
25 fisheries section - I know in Kenora district -

1 maintains the mylar every service has a reproduction  
2 machine.

3 So if forests wants a copy of that  
4 particular lake map or if lands, you go and get in fact  
5 the mylar, you can run off a hundred copies for that  
6 particular program. So the service is the keeper of  
7 the master sheet, if you will, but all services, if  
8 they need a copy of that map, have unlimited  
9 quantities.

10 THE CHAIRMAN: Thank you.

11 MR. FREIDIN: Q. And I am just wondering  
12 if anyone else in the panel, from their particular  
13 experience, has anything to add to that?

14 Okay, thanks.

15 Mr. Ward, the methods of collecting  
16 critical fish habitat for stream and river surveys is a  
17 ground survey as opposed to a shoreline cruise.

18 Can you advise whether the information  
19 which would be obtained and the way it would be  
20 recorded would be any different for a stream and river  
21 survey done that way through a ground survey than it  
22 would -- than the information you receive described for  
23 lakes -- pardon me, for a shoreline cruise.

24 MR. WARD: A. Basically it is the same  
25 kind of information. As I mentioned, it is called a

1 river cruise for rivers and it refers -- if you look in  
2 the manual, the reader to the section on shoreline  
3 cruise in the lake survey section of the manual. So  
4 basically if you are doing river surveys you use the  
5 same techniques that are outlined in the lake survey  
6 section.

7 In terms of streams, again you are not  
8 necessarily going to be using a boat to identify  
9 habitat, that's why it is called a ground survey. You  
10 are normally walking along the ground and, again, it's  
11 mapping the same ten types of sub-strait are to be  
12 mapped.

13 They may indicate other information like  
14 logs and overhanging banks and location of pools and  
15 riffle areas as well, in terms of streams, but  
16 basically it is the same kind of information that's  
17 mapped.

18 Q. If I can just have one moment, Mr.  
19 Chairman.

20 Mr. Ward, you indicated earlier in your  
21 evidence that the quality of the information that you  
22 get in relation to the fish species present, critical  
23 fish habitats and slope of the shoreline areas  
24 following the methods described in subparagraph 4 will  
25 be of the same quality as the information you get on



1 those subjects if you did those surveys in accordance  
2 with the aquatic habitat survey manual; is that  
3 correct?

4 A. That's correct.

5 Q. Can you advise me: Does the  
6 information obtained through the methods described in  
7 paragraph 4 -- I am sorry, all right.

8 Let me refer you - I apologize - refer to  
9 paragraph 2 where it indicates that information shall  
10 normally be obtained through surveys conducted to  
11 standards described in the manual of instructions for  
12 aquatic habit inventory surveys.

13 A. Right.

14 Q. And then it says:

15 "The use of any other survey method must  
16 be approved by a Ministry fisheries  
17 biologist."

18 Can you advise me, under this provision  
19 can the Ministry biologist approve a method which would  
20 result in the quality of the data being lower than that  
21 which will be produced by following methods described  
22 in the aquatic habitat inventory survey manual?

23 A. No, because the information we are  
24 asking is the minimal amount that you require and  
25 basically there is a standard way of collecting that

1 information.

2 Q. Now, the policy doesn't specifically  
3 state that; does it?

4 A. No.

5 MR. FREIDIN: Mr. Chairman, this issue  
6 arose with certain counsel and I have been instructed  
7 by my client that I can indicate to the Board that in  
8 interpreting paragraph 2 under the heading of Minimum  
9 Information Requirements, that the Ministry biologist  
10 can only approve the use of other survey methods where  
11 such methods will produce information which will, in  
12 respect to fish species present, critical fish habitat  
13 and slope of the shoreline areas that is comparable in  
14 quality to the information which will be produced by  
15 following the survey methods described in the aquatic  
16 habit inventory survey manual for such matters.

17 I just wanted to put that on the record.

18 THE CHAIRMAN: What's that, an unofficial  
19 policy.

20 MR. FREIDIN: It's an unofficial policy.  
21 It may show up it a recommended term or condition by  
22 the Ministry. It is a matter which was raised with some  
23 concern. The Ministry believes it has addressed that  
24 concern and I wanted to just indicate on the record  
25 that that in fact was the intent of that particular

1 provision so that there wouldn't be any confusion.

2 Is there going to be a morning break, Mr.  
3 Chairman?

4 THE CHAIRMAN: Yes. Is now a good time?

5 MR. FREIDIN: It will be by my notes,  
6 yes.

7 THE CHAIRMAN: Very well. We will break  
8 for 20 minutes.

9 ---Recess taken at 10:00 a.m.

10 ---Upon resuming at 10:20 a.m.

11 THE CHAIRMAN: Thank you. Be seated,  
12 please.

13 MR. FREIDIN: Q. Mr. Ward, I understand  
14 that you wanted to go back and comment on a piece of  
15 your earlier evidence.

16 MR. WARD: A. Yes. In regard to the  
17 question whether I was concerned that by not collecting  
18 all the fish species in the lakes whether we were in  
19 fact missing, sort of, knowing -- or about protecting  
20 critical habitats from minor species.

21 One thing that I would like to mention is  
22 that in terms of some of the recent developments in  
23 fisheries science, in particular on the Great Lakes  
24 which are right next door to us here, there is a report  
25 that's come out by Ryder and Edwards which is in my



1 evidence that indicates for managing oligotrophic  
2 systems in the Great Lakes, oligotrophic basins which  
3 are, sort of, the cold water nutrient poor basins taht  
4 if you can manage for the complete life history of lake  
5 trout you will, in fact, be managing for all the  
6 organisms including benthic invertebrates and small  
7 fish in that eco-system.

8 And I know another report will be coming  
9 out as well for the Great Lakes, they are sponsored by  
10 the International Joint Commission for mesotrophic  
11 environmentes, which are environments which I guess in  
12 terms of fish communities are more cool water, cool  
13 water lakes such as Wawa and pike lakes that if you  
14 manage for the complete life history of walleye you are  
15 in fact managing for all the organisms that are in the  
16 mesotrophic environment.

17 So this is the kinds of things that are  
18 being recently developed and make me feel a little bit  
19 more confident that if we can collect the top predators  
20 in our lake survey program and we protect their  
21 critical habitats, I can manage for the complete life  
22 histories of walleye or pike in those lakes that we  
23 are, in fact, going to be managing and protecting all  
24 the other organisms in that eco-system as well.

25 MR. MARTEL: How readily do you put some

1 other species in to try to regulate them? Do you get a  
2 backlash? For example, smelt I guess can really ruin a  
3 trout lake.

4 MR. WARD: That's correct.

5 MR. MARTEL: And how do you prevent that  
6 from occurring though?

7 MR. WARD: It is very difficult. In the  
8 northwest region unfortunately we have recent smelt  
9 introductions into some of our lake trout lakes, Red  
10 Lake in particular and it came from smelt from Lake  
11 Superior here, that we have people that come in the  
12 spring and collect smelt and they take the smelt back  
13 in bags or whatever, buckets and actually all the eggs  
14 and the sperm all go to the bottom of the bag and you  
15 have got millions of fertilizeed eggs in the bottom of  
16 these bags.

17 And they clean the smelt and then they  
18 just throw all the remains, including these fertilized  
19 eggs into our stream or into a sink that drains  
20 directly into the lake and we end up having an  
21 introduction.

22 And in terms of trying to prevent that,  
23 it is very hard because you can't really restrict, you  
24 know, where people can go and fish. What we have done  
25 in the northwest to try to prevent that spread from

1 occurring into other lakes out of the Red Lake system  
2 is to ban the harvest of smelt and the use of smelt as  
3 bait because the people use it not only for angling,  
4 but they use smelt for bear baiting as well which, if  
5 you pile a whole pile of smelt and fertilized eggs on  
6 the shore, a rain could come along and you have got  
7 smell into that system.

8 So we are trying to slow it down, but I  
9 think it is inevitable in terms of time that we are  
10 going to have smelt throughout the system.

11 I think one of the ways to try and manage  
12 that is to try and maintain our top predators in good  
13 condition, our lake trout and our walleye and our pike  
14 that hopefully will feed enough on smelt and keep their  
15 numbers down so that we don't get massive smelt kills  
16 and that's the main species that we have in our lakes  
17 in the future.

18 MR. FREIDIN: Q. Mr. Ward, could you  
19 advise when the policy, Exhibit No. 304, came into  
20 effect?

21 MR. WARD: A. The policy came into  
22 effect in this year in August.

23 Q. And can you advise, did the Ministry  
24 ever have a similar document which was used in the  
25 field for a similar purpose?



1           A. We had the policy that was issued in  
2     June of this year as well. Before that we didn't have  
3     a policy statement prepared but we have had various  
4     drafts of the Guidelines for the Protection of Fish  
5     Habitat since about 1981 used in the field.

6           Q. Okay, thank you. In the policy  
7     statement on the first page, and can I just direct you  
8     to the second paragraph.

9           In fact, perhaps I would direct Mr.  
10    Kennedy to the second paragraph. It indicates that --  
11    in the second paragraph, third last line:

12                 "Additional operational measures to  
13                 protect water quality and fish habitat  
14                 are contained in the Ministry's code of  
15                 practice for timber management operations  
16                 in riparian areas."

17           Can you advise what the document is and  
18    also indicate whether it has been prepared as of today?

19           MR. KENNEDY: A. I describe it as a  
20    document, it's currently being prepared, it is in draft  
21    form at the moment. It is a document that's going to  
22    be giving some direction to individuals that are  
23    working in the field, those that are engaged in the  
24    actual activity on the ground and I would summarize by  
25    saying that the intent is to provide measures that will

1 protect water quality.

2 And it is under preparation right now and  
3 I expect it to be released by February the 1st of '89.

4 Q. Thank you. Mr. Ward, there is  
5 reference in the material to fish spawning and nursery  
6 areas being identified on the basis of physical and  
7 biological characteristics.

8 Can you advise: Are the places  
9 identified ones where actual spawning or nursery areas  
10 have been identified, or are you referring to potential  
11 areas?

12 MR. WARD: A. I am referring to  
13 potential areas.

14 Q. Do you, from time to time, obtain  
15 information about the actual location of spawning  
16 areas?

17 A. Yes, we do.

18 Q. Is it common or expected that a lot  
19 of the areas would be ones where actual spawning or  
20 evidence of nurseries had been observed?

21 A. Yes.

22 Q. Can you turn to page 514 of the  
23 witness statement.

24 A. I have it.

25 Q. If I could direct you to the third

1 last paragraph.

2 A. Yes.

3 Q. You refer to, four lines up from the  
4 bottom:

5 "14 of these species..."

6 Talking about 14 of the 118 fish species  
7 that occur in the area of the undertaking:

8 "14 of those have been reviewed and  
9 assigned designations by the Committee  
10 for the Status of Endangered Wildlife in  
11 Canada."

12 Can you advise whether any of those fish  
13 species are listed in the Ontario Endangered Species  
14 Act?

15 A. No, they aren't.

16 Q. Can you advise why not?

17 A. Well, the Ontario Endangered Species  
18 Act is provincial legislation. We use the federal  
19 Fisheries Act which takes precedence over provincial  
20 legislation to protect fish habitat in Ontario and  
21 that's -- and our conservation officers are fisheries  
22 officers under that federal act can enforce that  
23 legislation.

24 Q. Okay, thank you. Now, there was  
25 reference in that particular portion of the witness



1 statement to COSEWIC, the Committee on the Status of  
2 Endangered Wildlife in Canada and there has been some  
3 discussion of that group earlier in the evidence.

4 And, Mr. McNicol, I understand that you  
5 have put together a document which gives a brief  
6 explanation of COSEWIC and the relationship of that  
7 organization to the Ontario Endangered Species Act?

8 MR. McNICOL: A. That's correct.

9 Q. And do you have your copy of that  
10 document in front of you?

11 A. I do.

12 Q. It is dated October, 1988 Wildlife  
13 Branch No. 2 at the bottom?

14 A. Correct.

15 MR. FREIDIN: Perhaps I can mark this as  
16 the next exhibit.

17 THE CHAIRMAN: Exhibit 308.

18 ---EXHIBIT NO. 308: Document dated October, 1988,  
19 from Wildlife Branch No. 2.

20 THE CHAIRMAN: Thank you.

21 MR. McNICOL: If I may, Mr. Freidin, I  
22 have a schematic here that may help to unravel some of  
23 the mystery with regard to the relationship between the  
24 designations for the Ontario Endangered Species and  
25 COSEWIC.

1. MR. FREIDIN: Q. Okay, put it on then.  
2 And the document that you are putting up on the screen  
3 is in fact page No. 4 of the exhibit?

4 MR. McNICOL: A. Correct. The -- can  
5 you light that up.

6 MR. WILLIAMS: Yes, better.

7 MR. McNICOL: I guess the first important  
8 point to recognize about COSEWIC is it is an advisory  
9 committee, it has no regulatory or legislative power.

10 If you look at the right-hand side of the  
11 schematic, it indicates that COSEWIC has a number of  
12 sub-committees. These sub-committees meet concerning  
13 matters with regard to birds, plants, mammals, fish and  
14 marine mammals, reptiles and amphibians.

15 The makeup of these sub-committees who  
16 look at representation basically from right across  
17 Canada; all provinces and territories are represented,  
18 and there are designates from the groups that you see  
19 below Canadian Wildlife Service, Parks Canada, The  
20 National Museum of Natural Science and so on.

21 The purpose of the sub-committees is to  
22 look at species right across this nation that are  
23 potentially at risk. These groups, the sub-committees  
24 meet on a regular basis basically as an as needed basis  
25 to deal with lists of birds or plants or mammals that

1 have been identified as potentially at risk.

2 If the sub-committee on plants, for  
3 instance, feels that a particular plant species is  
4 potentially at risk, and if we look at the left-hand  
5 side of schematic, if the decision is yes, they will  
6 ask that -- or determine that a status report should be  
7 prepared on that particular species. The production of  
8 that status report will become the responsibility of  
9 one of the member organizations.

10 I refer you again to the right-hand side  
11 of the schematic: CWS, various provincial governments,  
12 Fisheries and Oceans, World Wildlife Fund and so on.

13 Q. CWS is which group?

14 A. Canadian Wildlife Service. So a  
15 status report is prepared. This status report then is  
16 evaluated by the other COSEWIC sub-committees upon its  
17 finalization.

18 What occurs now is that the Chairman of  
19 COSEWIC will conduct what is referred to as a straw  
20 ballot, in essence he gets on the phone and does a  
21 phone poll of the voting members for COSEWIC and gets  
22 an assessment of what their feel for this document is  
23 and the recommendation with regard to the status of  
24 that particular species, whether it is a good  
25 recommendation or not.



1                   Q. Can I just stop you there. If the  
2 particular subject matter of the status report is fish,  
3 are the Ontario or the provincial representatives  
4 advised about the developments?

5                   A. As Mr. Ward has detailed, fish being  
6 a federal responsibility, in essence the line of the  
7 flow chart from that point on does not indicate that  
8 there is any interplay with provincial jurisdictions.

9                   Now, obviously being federal in nature  
10 they are considering that particular species in its  
11 national context.

12                   If we follow then below evaluation by  
13 COSEWIC sub-committees, the straw ballot, which again  
14 is basically a phone poll, at an annual April meeting  
15 of COSEWIC for all voting members, a formal vote is  
16 taken on the status as recommended by the status  
17 report.

18                   After that vote, that particular species  
19 will be put into one of the categories that you see  
20 below vulnerable, threatened, endangered, extirpated or  
21 extinct.

22                   Q. If I could ask a question. If you go  
23 back to that straw ballot, we have heard evidence that  
24 the designations that Ontario may place on one of these  
25 species is not necessarily the same as the designation

1       that is put on it at the national level by COSEWIC.

2                   And in terms of that straw vote, when  
3       Ontario government, I guess -- their vote, is it  
4       influenced by its decision or possible decision, that  
5       it may very well designate that particular species as  
6       something different than what is recommended in the  
7       status report?

8                   A.   Very much so.   If we go back to the  
9       left-hand side of the flow chart, the evaluation by  
10      COSEWIC sub-committees, you will note an arrow pointing  
11      over to Ontario evaluation.   That status report is  
12      received by our non-game biologist in Toronto.   She  
13      will poll individuals in Ontario concerning that  
14      particular species and get an assessment of the  
15      relevance of the COSEWIC designation in the Ontario  
16      context.

17                   That vote then feeds back into the straw  
18      ballot vote, if you will, to determine its national  
19      designation.

20                   Once a designation is struck by COSEWIC,  
21      you will note on the right-hand side where it talks to  
22      Ontario status designation, the designation that is  
23      struck by COSEWIC is taken under advisement by the  
24      Ontario non-game biologist -- by the Ontario non-game  
25      biologist and, again, an Ontario designation is then

1 struck.

2 This designation may or may not be the  
3 same as the national designation and the reason for  
4 that is that COSEWIC is dealing with that particular  
5 plant species on a national context; the Ontario  
6 designation is a designation struck for Ontario only.

7 THE CHAIRMAN: Tell me, are the other  
8 provinces in the same position?

9 MR. McNICOL: In terms of having their  
10 own designation system?

11 THE CHAIRMAN: Yes.

12 MR. McNICOL: I can't answer that  
13 question.

14 THE CHAIRMAN: Because it would seem to  
15 me that if every one of the other provinces, or several  
16 of the other provinces want to look at the status  
17 report in the context of their own province, like  
18 Ontario appears to want to do, then the national  
19 COSEWIC designation does not really mean a heck of a  
20 lot.

21 I mean, it may be a national picture, but  
22 each province has its own problems or stresses upon the  
23 particular species, et cetera, and it may be quite  
24 different in the provincial context.

25 MR. McNICOL: It is a good point. A



1 particular province, for instance, may differ with  
2 regard to the COSEWIC designation because in that  
3 particular province there may be all sorts of that  
4 particular species.

5 So it is relatively important that a  
6 province has a designation system that reflects what is  
7 actually occurring on their land base.

8 Now, it is also important, obviously,  
9 that there be some legislation to ensure that something  
10 in the provincial context that is classified as  
11 endangered can be protected under some type of  
12 legislation. It is important to note that COSEWIC,  
13 again, is not a regulatory or legislative group.

14 THE CHAIRMAN: On the basis, again, that  
15 if it were not endangered in several provinces but  
16 endangered in Ontario, you would want to protect it  
17 here?

18 MR. McNICOL: That is an interesting  
19 point and at that point I would like to direct you to a  
20 comparison of the designations.

21 Can you turn to page 11 of the document.  
22 If we look at the first two species as examples --  
23 well, perhaps that is not a good example.

24 Let's go down to the fourth example, the  
25 common barn owl. If you note the second column, the

1 Ontario designation for that particular species is  
2 threatened, the COSEWIC designation is rare.

3 So in terms of the provincial context, we  
4 have a more conservative designation for that  
5 particular species in a provincial context than in the  
6 national. And I think you will note as you go down the  
7 list that invariably that is the case, conservative --  
8 Ontario has a more conservative designation for those  
9 COSEWIC designations, for those particular species than  
10 COSEWIC.

11 And, again, the examples, the bald eagle  
12 and golden eagle both in Ontario are classified as  
13 endangered. COSEWIC has them not in any category which  
14 indicates that in the national context there is no  
15 concern for those particular species; they have not  
16 fallen into any of the designations that COSEWIC has  
17 struck.

18 MR. FREIDIN: Q. Could you advise, Mr.  
19 McNicol, what practical significance, if any, is there  
20 in Ontario to a species being given a designation  
21 either nationally by COSEWIC or provincially making it  
22 on to the Ontario list?

23 MR. McNICHOL: A. In terms of the  
24 Ontario context, if a species is listed in the Ontario  
25 context as endangered, it then falls under the

1       Endangered Species Act in Ontario which is the  
2       legislation that allows for the protection of that  
3       species in Ontario.

4               MR. MARTEL:   Could I ask a question  
5       because I want to know what happens to fish.   You said  
6       it went to the federal jurisdiction.

7               MR. McNICOL:   I am sorry, that is my  
8       fault; it is an omission on my part.

9               Following -- if we can refer again to the  
10       flow chart, the schematic, an evaluation by COSEWIC  
11       sub-committees here.   When they are dealing with fish,  
12       the designation flows only downward from that point.  
13       There is no cross-reference over to Ontario, because  
14       Ontario has no mandate with regard to fisheries, so the  
15       designation that is struck by COSEWIC is the  
16       designation that would be applied.

17              MR. MARTEL:   But you could have a serious  
18       problem with fish species becoming endangered, let's  
19       say, in Ontario because of our type of maybe industry  
20       or what we do with our effluent from municipalities or  
21       any number of reasons, that had it vastly different  
22       than what happens on the prairies.

23              So is there not a necessity, even though  
24       fish comes under federal jurisdiction, to somehow --  
25       for us to start to designate it because it might be



1       vastly more endangered in Ontario than it is  
2       nationally?

3                   MR. McNICOL: I think Mr. Ward can deal  
4       with that.

5                   MR. WARD: We use the Federal Fisheries  
6       Act in Ontario. The Ministry of Natural Resources  
7       administers the Federal Fisheries Act and, as I  
8       mentioned, our conservation officers are federal  
9       fisheries officers and the Federal Fisheries Act  
10      doesn't distinguish between threatened or rare, the  
11      federal Act protects all fish species, all fish stocks  
12      and it is a very powerful piece of legislation. And so  
13      we have the legislative authority.

14                   If we had an endangered, say, in Hamilton  
15      harbor, a species there, we could use the--

16                   MR. MARTEL: I think they are all there.

17                   MR. WARD: --we could use the Federal  
18      Fisheries Act to protect that habitat.

19                   MR. FREIDIN: Q. And I think there is  
20      one last matter. There is a -- and this perhaps will  
21      be dealt with by Mr. Ward, but just in case it is not,  
22      I note that the designations than can occur at the  
23      national level, at the bottom left-hand side, are  
24      different, the categories are different than the  
25      Ontario status designation.

1 And any reason for that?

2 MR. McNICOL: A. Again, when it gets  
3 down to this point here where there has been a national  
4 designation, Ontario takes that under advisement and  
5 looks at that particular species in the provincial  
6 context to determine whether they agree with the  
7 COSEWIC designation in the context of the province or  
8 whether they believe that there should be a downgrading  
9 or an upgrading in that particular classification.

10 And, as I pointed out on page 11,  
11 invariably the species that we have dealt with on the  
12 Ontario list that have also been dealt with by COSEWIC,  
13 we have a more conservative designation than the  
14 national.

15 Q. The national have this category of  
16 vulnerable; Ontario has the category of rare. Is there  
17 any significance to that?

18 A. I guess the best way to explain that  
19 would be to turn to page 5 where it is detailed what  
20 the specific COSEWIC categories refer and page 6 which  
21 details the definitions of the Ontario categories.

22 If we look at the designation vulnerable  
23 under COSEWIC, this is a new designation and replaces  
24 rare. It talks to any indigenous species of fauna or  
25 flora that is particularly at risk because of low or

1 declining numbers, the currents at the fringe of its  
2 range or in restricted areas or for some other reason  
3 but is not a threatened species.

4 We are not in agreement with COSEWIC's  
5 use of that particular designation. We continue to use  
6 the designation rare. And if you look at the footnote  
7 at the bottom of page 6, it explains why we vary in  
8 terms of that regard. I don't think it is necessary to  
9 read that at this juncture.

10 Q. Thank you.

11 MR. FREIDIN: Mr. Chairman, we will come  
12 back to this document when Mr. McNicol is giving his  
13 evidence in relation to wildlife.

14 I will tell you the one thing that all  
15 these changes has done is it has kept the xeroxing  
16 people in business. I don't know how many different  
17 copies we have got of this list.

18 Q. Mr. Ward, you filed some documents as  
19 Exhibit 268, and I don't think it will be necessary to  
20 go to that right now, Mr. Chairman.

21 There has been some discussion in the  
22 past about a species called aurora trout. Are you  
23 familiar with the general nature of that evidence?

24 MR. WARD: A. Yes, I am.

25 Q. And aurora trout appears as an



1 endangered species on the COSEWIC list, it is on the  
2 first page of Exhibit 268.

3 A. Yes.

4 Q. There was some discussion during  
5 Panel 6 about whether the province was permitting the  
6 fishing of aurora trout. And am I correct that aurora  
7 trout is not on any of the -- it is not on -- pardon  
8 me.

9 Does Ontario deal with aurora trout as an  
10 endangered species set out on that COSEWIC list?

11 A. No.

12 Q. All right. There was evidence about  
13 fishing of aurora trout being allowed in Ontario. Can  
14 you advise whether, in your view, that fishing is  
15 threatening the stock of aurora trout in Ontario?

16 A. No, it is not threatening them.

17 Q. On what basis do you make that  
18 statement?

19 A. Well, we have aurora trout, to start  
20 with, it is a sub-species of brook trout. We have our  
21 fish geneticist, Dr. Peter Eason, has looked at it  
22 genetically and his determination, that it is a colour  
23 variant of brook trout and, therefore, a sub-species.  
24 So it is separate stock or race of brook trout.

25 And it was about 20 years ago that the

1 stock, the last of the aurora trout, I guess,  
2 sub-species or race was disappearing and our hatchery  
3 manager at Hills Lake wanted to preserve that gene pool  
4 of brook trout and brought that stock and a certain  
5 amount of spawning fish into the hatchery.

6 From there, we have taken that stock and  
7 basically we have them in ten different places in  
8 Ontario right now. We have them in two hatchery  
9 systems, Hills Lake in the North Bay hatchery. We have  
10 felt that keeping a native fish like that or a native  
11 stock like that in a hatchery is not the best place for  
12 it, we want to get it back where it was before in terms  
13 of establishing a self-reproducing population.

14 Basically, five lakes have been chosen to  
15 be introduced with aurora trout and they have to have  
16 certain characteristics those lakes. Not only do they  
17 have to have the right types of fish available for the  
18 aurora trout to feed on, but they also have to have  
19 suitable spawning habitat so you can get a  
20 self-reproducing population.

21 We take the eggs out of our hatchery  
22 system and stock these lakes on a regular basis to try  
23 to get the population built up and get a reproducing  
24 population occurring.

25 And in some of the lakes, I guess it

1 would be this fall, we will determine whether we have  
2 that in some of the lakes by basically setting trap  
3 nets and seeing how many spawning fish we have and  
4 whether they are utilizing spawning shoals, whether  
5 eggs are being deposited.

6 In actual fact, two of the lakes are  
7 lakes that have been subjected to acid rain from the  
8 Sudbury smelter and there is quite an intensive  
9 monitoring program to see whether these brook trout can  
10 reproduce and they even have fry merchant traps to see  
11 whether the fry will incubate in the gravel and  
12 actually do emerge in the spring.

13 So there is those five lakes that we are  
14 trying to establish self-reproducing populations.

15 There are three other lakes that we are  
16 putting surplus eggs that are above and beyond those  
17 that we require for establishing self-reproducing  
18 populations and those are ones that are trying to  
19 create a put-and-take -- or put into lake type of  
20 fishery. In other words, they are holding basins, they  
21 are suitable for holding fish and growing them to a  
22 catchable size, but they aren't necessarily suitable  
23 for establishing a self-reproducing population because  
24 they are not -- have suitable spawning grounds or  
25 whatever.



1                   MR. MARTEL: Why would you do that? Let  
2 me ask: Why would you do that when you have probably  
3 got many other lakes that could, if you were to stock  
4 them with eggs, have proper spawning ground and, in  
5 fact, populate themselves thereafter, as to just put  
6 into a lake for fishing purposes?

7                   And you are going to have to continue to  
8 do it, as I understand it.

9                   MR. WARD: Well, if they don't -- if the  
10 fish don't mature and naturally spawn themselves, yes,  
11 it will have to be supplemented by hatchery -- the  
12 hatchery brood stock, that's correct.

13                   But we have chosen five lakes that we  
14 think have the best characteristics to try and do that,  
15 and we are having difficulty in establishing  
16 self-reproducing populations. There aren't a lot of  
17 lakes around that you can -- you know, you can say:  
18 Hey, we can put aurora trout in here and we will get a  
19 good self-reproducing population. It is difficult.

20                   MR. MARTEL: Have you gone back to the  
21 lakes that you previously had these fish in and tried  
22 to restock the old ones?

23                   MR. WARD: Yes. I think the two that are  
24 affected by the Sudbury acid rain were originally --  
25 that's where they were originally found and we are

1       trying to re-establish them there in those lakes.

2               Anyhow, in terms of our -- the purpose of  
3       trying to provide an angling fishery is, as I said,  
4       again it is surplus eggs. They aren't eggs -- it is no  
5       good putting -- if you need 100,000 to establish a  
6       self-reproducing population, it is no good putting  
7       200,000 in there, you are just going to waste 100,000  
8       of them; they are either going to be eaten by fish or  
9       they are going to have so many -- you may not have  
10      enough nursery area for those 100,000 fry that hatch.  
11      If you put 200,000, you will get like 200,000 starving  
12      to death.

13             So they try and determine the right  
14      quantity of fish to put into a lake; there is a  
15      stocking density that you have. You put, you know, 30  
16      per acre or something like that. So that is why you  
17      end up surplus and, of course, a hatchery system always  
18      produces -- tries to produce enough eggs for your basic  
19      requirement of those five lakes.

20             And if they do a good job looking after  
21      those eggs; in other words, they don't become fungused  
22      when they are being incubated during the winter and the  
23      water supply doesn't shut off and you lose, you know,  
24      100,000 of them, you should have some set aside for  
25      contingency purposes like that. So they have surplus

1 ones.

2 So they are stocked into the three lakes  
3 that we want to create an angling fishery and we hope  
4 by that, by having an angling fishery will elevate the  
5 profile of this stock of brook trout and people will  
6 become interested in it.

7 And we have a very restrictive fishery, I  
8 think they are allowed one fish per year. We have a  
9 creel survey that monitors the kind of harvest that  
10 comes and we have created a brochure that is available  
11 for anglers that describes the fishery. In other  
12 words, that stock of fish is probably, you know, the  
13 highest profile of any stock of fish that we have in  
14 Ontario right now.

15 And basically, you know, that is I think  
16 indicative of our fisheries program. We want to  
17 protect stocks of fish. We are not so necessarily  
18 concerned with species of fish but we, you know,  
19 because a fish -- a walleye in lake "x" isn't  
20 necessarily the same as a walleye in lake "y", we want  
21 to protect both those stocks of walleye. It is no good  
22 wiping out the stock in "y" and say: Well, we can  
23 reintroduce the stock from "x" because they have  
24 different genetic characteristics and this is what we  
25 found in terms of when we evaluate that genetically,



1 you know, with sort of -- our scientists have told us  
2 that.

3 I hope I have alleviated some of your  
4 concerns, Mr. Martel, in that area.

5 MR. FREIDIN: Q. Could you refer to page  
6 532. Again, this is -- I guess you better turn to  
7 Exhibit 268, Mr. Chairman, because it looks like I am  
8 going to be there.

9 There is a list of the Ontario fish  
10 species with the assigned COSEWIC status to April,  
11 1988. Can you advise: How many of these species which  
12 are identified as vulnerable, rare, threatened or  
13 endangered pursuant to COSEWIC are found in the area of  
14 the undertaking and are potentially affected by timber  
15 management?

16 MR. WARD: A. I have indicated on that  
17 first Table 1 of Exhibit 268 that there are, I believe,  
18 nine fish that are found in the area of the undertaking  
19 and I feel that none of them are threatened by timber  
20 management activities. Now, I can explain that.

21 MS. SWENARCHUK: Just give us the page.

22 MR. FREIDIN: Page 531. It was the  
23 replacement pages for 531 to 535.

24 MS. SWENARCHUK: And the nine species are  
25 those on the second page of the exhibit?

1                   MR. WARD: No, those are the species that  
2 are marked with an asterisk found in the area of the  
3 undertaking.

4                   MS. SWENARCHUK: All right.

5                   MR. WARD: I actually added blue pike,  
6 blue walleye, that was a mistake initially. Even  
7 though they are indicated extinct on this page, there  
8 was a recorded blue pike caught from Lake Nipissing in  
9 1930 that we have in our records in Fisheries Branch  
10 and actually I was told just recently that they have  
11 found--

12                  Q. They found him.

13                  A. --they found another blue pike that  
14 has been indentified this summer that was collected  
15 from Lake Nipissing. A fish taxonomist from actually  
16 Cornell University has identified it and it has been  
17 confirmed - I don't know whether it has been  
18 confirmed - but Ed Cross from the Royal Ontario Museum  
19 has said that this man knows how to identify blue pike,  
20 so we think that we have got that species back in  
21 Ontario again.

22                  THE CHAIRMAN: How do you identify it, by  
23 eating it?

24                  MR. WARD: If that is the way, we will  
25 let the Chairman have the first opportunity.

1                   MR. FREIDIN: Q. Now, you indicated that  
2                   in your view none of the 14 species that you have  
3                   identified as being in the area of the undertaking are  
4                   potentially affected by timber management. Can you  
5                   advise me: On what basis do you make that statement?

6                   MR. WARD: A. Well, the species that are  
7                   listed there, like aurora trout, I feel is well  
8                   protected in terms of reserves and using our fish  
9                   habitat guidelines around those lakes where they are  
10                  being stocked.

11                  The other species, like the deep water  
12                  cisco, the key eye, the long jaw cisco, the short jaw  
13                  and the short nose cisco are all Great Lakes fish, they  
14                  are all found in deep water and basically we are not  
15                  logging or impacting on Lake Superior or Lake Huron so  
16                  I don't expect them to be threatened by any timber  
17                  management activities.

18                  The river red horse is a species that is  
19                  basically around the St. Lawrence River and Ottawa  
20                  Rivers, they are sort of -- the northern distribution  
21                  of that species is found in the southern end of the  
22                  area of the undertaking.

23                  And I think that in terms of those river  
24                  systems we aren't -- I don't expect timber management  
25                  activities to impact on the habitats in those rivers.



1 They are protected for other reasons. In terms of  
2 aesthetic purposes, you would keep a reserve of timber  
3 there, not necessarily identifying critical fish  
4 habitat.

5 In addition, that is in our Great  
6 Lakes/St. Lawrence forested areas and the type of  
7 cutting that occurs there, there is more selection  
8 cutting and shelterwood cutting which I would expect  
9 would have less impact on the aquatic environment.

10 Q. You indicated in the case of aurora  
11 trout you felt that the fish habitat guidelines played  
12 some role in your decision. Do I take it then that you  
13 have assumed for the purposes of answering that  
14 question that the fish habitat guidelines were being  
15 used?

16 A. Yes. I am assuming that if we  
17 identified, you know, critical habitat or -- in terms  
18 of aurora trout, we have a continuous reserve around  
19 aurora trout lakes. That is identified in our  
20 guidelines.

21 Q. And when you answered my question  
22 that you didn't believe that any of those species were  
23 potentially affected by timber management, what did you  
24 understand -- or what do you mean when you say  
25 something is potentially affected by timber management

1 in the context of the particular question?

2 How do you determine whether in fact it  
3 had been potentially affected or not -- had been  
4 affected or not?

5 A. Well, it would have to reduce the  
6 population so that you would change the COSEWIC status,  
7 as listed here.

8 Q. Can you turn to page 533.

9 THE CHAIRMAN: Just on that last  
10 question, Mr. Ward. When you say it would have to have  
11 its population reduced by a change in COSEWIC status --

12 MR. WARD: No. I am saying it would --  
13 the population level of that fish species would have to  
14 be reduced so that COSEWIC would change the status of  
15 it.

16 THE CHAIRMAN: But is the COSEWIC system  
17 such that every possibly threatened or endangered  
18 specie is evaluated, or do they just look at certain  
19 species in a given year, or does it have to be brought  
20 to their attention?

21 I mean, can there not be species out  
22 there that may in fact be endangered or affected by  
23 timber management practices or anything else that  
24 COSEWIC never looks at?

25 MR. WARD: That is possible. I am not

1 too sure how COSEWIC --

2 THE CHAIRMAN: I guess what I am asking  
3 is: Do you rely on whether or not COSEWIC is dealing  
4 with it as your barometer as to whether or not there  
5 can be a potential effect, or is there an independent  
6 evaluation conducted in terms of the Ministry when it  
7 is embarking on timber management practices?

8 MR. WARD: Well, I would say I think that  
9 we do rely on COSEWIC to flag endangered, threatened  
10 species for us. But I think, as well, we have  
11 mechanisms internally to identify. For example, aurora  
12 trout is a good example where a hatchery manager knew a  
13 stock of fish was threatened, it was diminished over  
14 time - this is 20 years ago - and took it upon himself  
15 to protect that brood stock.

16 And I think if, you know, a fisheries  
17 biologist found that with other stocks that we knew  
18 were threatened that we would implement mechanisms to  
19 try and protect the stocks. As I say, we have got the  
20 Federal Fisheries Act that we can use to do it; we  
21 don't have to go around and look -- use, you know,  
22 provincial legislation.

23 MR. FREIDIN: Q. Mr. Ward, can you  
24 advise me: Do the Timber Management Guidelines for the  
25 Protection of Fish Habitat apply to all lakes which



1 have fish populations?

2 A. Yes, basically. There may be some --  
3 well, in terms of the guidelines, we are also  
4 protecting water quality so we are looking at headwater  
5 lakes and we are looking at lakes down to 10 hectares  
6 in size and other places where we don't have fish  
7 habitat, we are looking at restricting the amount of  
8 shoreline cutting, like, to no more than 50 per cent.

9 So I think if we can meet the water  
10 quality objectives, we will be protecting other species  
11 even if they don't have -- you know, they don't provide  
12 an immediate interest to man, they aren't either a bait  
13 fish or a sport fish.

14 Q. But the application of those  
15 guidelines is not limited to lakes in which there  
16 happen to be a rare, threatened, endangered or  
17 vulnerable species under the COSEWIC list?

18 A. No. As I mentioned earlier,  
19 fisheries managers are concerned with protecting all  
20 stocks of fish. I would be just as much concerned as  
21 losing a Lake of the Woods walleye as I would be  
22 losing, you know, an aurora trout.

23 Q. All right. If you could turn to page  
24 533, which is Table 3. It is entitled: Ontario Fish  
25 Species for which Status Reports are in Preparation or

1 Under Review.

2 Can you just explain what the category of  
3 Under Review would include?

4 A. I talked to the chairman of the fish  
5 sub-committee a few weeks ago about the annual review  
6 and what it actually meant and he said it could mean  
7 anything from tendering a contract for some individual  
8 or consulting firm to prepare a status report to having  
9 a status report, actually a draft version in his hands.

10 Q. And you also indicate on this  
11 particular matter the number of species which are in  
12 the area of the undertaking by the asterisk; is that  
13 correct?

14 A. That's correct.

15 Q. And can I ask you the same question I  
16 asked you before: Of those in the area of the  
17 undertaking, how many of those species, in your view,  
18 are potentially affected by timber management?

19 A. Well, there are five species listed  
20 there. Again, I don't feel that any of those species  
21 are threatened by timber management activities.

22 I would caution in terms of one, the  
23 spoonhead sculpin, there is a status report being  
24 prepared from that. It is the one species that's  
25 listed there, of those five, that is spread all across

1 Ontario that could be there. So in terms of where it  
2 is occurring in Ontario, we are not necessarily sure of  
3 all locations necessarily, so I don't necessarily -- I  
4 would have to wait and see the status report to see  
5 where. But I know it is distributed widely across the  
6 province.

7 The other species, like Atlantic salmon,  
8 of course, which they are trying to reintroduce into  
9 Lake Ontario wouldn't be affected -- I wouldn't expect  
10 to be affected by timber management activities.

11 The other species, the banded killey fish  
12 and so on, basically they are more southern Ontario  
13 distributions. I am just trying to look at a list here  
14 that I have.

15 For example, a big mouth buffalo is  
16 around the Lake Erie area, there is also some I guess  
17 in Saskatchewan in terms of the population, so I don't  
18 expect -- they are not really present in the area of  
19 the undertaking where it is occurring, so I don't  
20 expect timber management activity to affect that  
21 population.

22 Q. All right. And when you indicate  
23 that you don't believe that these species will be  
24 affected by timber management, are you making the same  
25 assumption in relation to the application of the



1 guidelines?

2 A. Yes, I am.

3 Q. Are you using the same criteria for  
4 determining whether the species would be potentially  
5 affected?

6 A. That's right.

7 Q. Can you turn to the next page, which  
8 is Table No. 4, where you indicate:

9 "The Ontario fish species of interest to  
10 COSEWIC, April 1988."

11 And when it says that the fish species is  
12 one of interest, what does that mean?

13 A. COSEWIC is looking at those species  
14 of fish. They may have been -- I guess to answer the  
15 Chairman's question just previously about, you know,  
16 how do they choose what fish species, I really don't  
17 know how these get on their lists, but these are ones  
18 that have been brought up by members or by people  
19 involved with fish distributions across Canada and  
20 saying that these are not very common or whatever, they  
21 may be threatened, let's look at these ones.

22 Q. Are status reports being prepared or  
23 have status reports been done for any of the species  
24 indicated on Table 4?

25 A. Not that I am aware of.

1 Q. Of those species again which you  
2 noted --

3 MR. WILLIAMS: Mr. Chairman, is it Table  
4 3 or Table 4?

5 MR. FREIDIN: Table 4.

6 THE CHAIRMAN: Four on 268, I believe --  
7 Exhibit 268.

8 MR. FREIDIN: I think if you are  
9 probably -- if you are looking at the old -- if you are  
10 looking at 534 of the original EA -- pardon me, the  
11 original witness statement, it will be Table 3.

12 MR. WILLIAMS: That's right.

13 MR. FREIDIN: You have to be referring to  
14 the new exhibit, or the new tables.

15 MR. WILLIAMS: Okay.

16 MR. FREIDIN: Q. In relation to those  
17 species again which are indicated as being found in the  
18 area of the undertaking, in your view, are any of them  
19 potentially affected by timber management activities?

20 MR. WARD: A. No, I don't believe they  
21 are. There are two species there, the striped shiner  
22 and the tessellated darter that fish taxonomists, the  
23 people that go around trying to identify different  
24 species of fish, have some disagreement and argument  
25 over whether the striped shiner is in fact a race or a

1 different stock of common shiner, and the tessellated  
2 darter, whether it is a separate race of johnny darter.  
3 Both the common shiner and the johnny darter are  
4 widespread throughout Ontario. So depending on whether  
5 they are separate species or stocks, they could be  
6 spread throughout Ontario.

7 In other words, we might have -- if the  
8 taxonomists agree that: Yes, striped shiner is a  
9 separate species, we could have striped shiner in  
10 northwestern Ontario because we do have the common  
11 shiner there.

12 So I would just caution in terms of my  
13 reply there that possibly the striped shiner and the  
14 tessellated darter are two species that could be  
15 potentially affected by timber management activities.

16 But, again, I would re-emphasize that we  
17 are looking at trying to protect stocks of fish. So  
18 even if they were -- if they decided that it was just a  
19 separate stock, we would still be interested in  
20 protecting it.

21 Q. When you gave those answers, were you  
22 making the same assumptions about the application of  
23 the fisheries guidelines; i.e., that they would be used  
24 properly?

25 A. Yes, I am.



1 Q. And were you using the same  
2 definition of potentially affected by timber management  
3 activities?

4 A. Yes, I am.

5 Q. Can you indicate for me how or why  
6 the striped shiner and the darter would be potentially  
7 affected by timber management activities if in fact the  
8 fish guidelines were being applied? That's what I  
9 understood you to have said.

10 A. Well, I meant to say that if we are  
11 applying the guidelines it would probably protect it in  
12 terms of what I said earlier, in terms of evidence that  
13 if we protect the critical habitats; that is, the  
14 gravel, rock/rubble areas and the wetland areas on  
15 lakes, we are going to be protecting the habitat for  
16 shiners and darters.

17 Q. Mr. Ward, could you advise me then,  
18 are there some of the species in the area of the  
19 undertaking which would be affected by timber  
20 management activities if the guidelines were not  
21 applied?

22 A. If the guidelines weren't applied, I  
23 would expect all 118 species of fish and probably the  
24 thousands of different stocks of fish to be potentially  
25 affected by timber management activities.

1 Q. Okay. And, Mr. Ward, I understand  
2 that -- are you familiar with the document that I am  
3 holding up?

4 A. Yes, I am.

5 MR. FREIDIN: And, Mr. Chairman, I would  
6 like to mark as an exhibit a status report on  
7 endangered wildlife in Canada for deep water sculpin,  
8 s-c-u-l-p-i-n.

9 I am doing this for the purposes of just  
10 having an example of a status report put before the  
11 Board and I am just going to ask Mr. Ward to very  
12 quickly just review it with you so you have information  
13 as to what goes in one of these things.

14 THE CHAIRMAN: Very well. Exhibit 309.

15 ---EXHIBIT NO. 309: Status report on endangered  
16 wildlife in Canada for deep water  
sculpin.

17 MR. FREIDIN: What was the exhibit  
18 number?

19 THE CHAIRMAN: 309.

20 MR. FREIDIN: Q. Mr. Ward, could you  
21 just then briefly review this with the Board so they  
22 will have an understanding of what a status report  
23 looks like and -- what it looks like?

24 MR. WARD: A. Right. And the reason I  
25 chose this one; there is about, I believe, eight or

1       nine status reports on fish prepared by -- or at least  
2       the nine I had an opportunity to look at, and this one,  
3       this species occurs, again, across the area of the  
4       undertaking, it is not just confined to the southern  
5       area of the undertaking.

6                       THE CHAIRMAN:   Excuse me, Mr. Freidin.  
7       You may have noticed a group walked in a little while  
8       ago.

9                       MR. FREIDIN:   I didn't notice, I am  
10      sorry.

11                      THE CHAIRMAN:   It looks like a class from  
12      one of the universities.  If you happen to have an  
13      extra copy of the exhibit, it might be nice to send one  
14      down--

15                      MR. FREIDIN:   We have one right here.

16                      THE CHAIRMAN:   --so they can take a look  
17      at what we are looking at.

18                      MR. WARD:   If we can begin with the first  
19      page on the exhibit.  Basically all the status reports  
20      follow the same kind of format.  In this case, Mr.  
21      Parker was hired -- or Gardner Lee Associates was hired  
22      to prepare the status report.  They basically start  
23      with an abstract which is a summary of their results.

24                      They talk first about the distribution of  
25      the fish.  Some of the reports may have a description



1 and actually describe what the species is like, usually  
2 they include a map. They talk about the protection  
3 that's occurring and I think most of them refer to the  
4 fish habitat provisions of the Fisheries Act. In this  
5 case, they indicate minimal protection for the species.  
6 Again, that's an author's interpretation of it.

7 In terms of the Federal Fisheries Act, if  
8 you read those provisions under the Federal Fisheries  
9 Act there is quite strong habitat protection  
10 provisions.

11 Population sizes and trends. They discuss  
12 the habitat that this fish is found in, the general  
13 biology about it, some of the limiting factors that are  
14 affecting the distribution of this fish, they may talk  
15 about the special significance of the species.

16 They do an evaluation and they have a  
17 recommendation and they make a proposed status  
18 recommendation, and they also have lists of references,  
19 personal communications with any other experts and  
20 acknowledgments. That's basically the format that a  
21 status report follows.

22 MR. FREIDIN: Q. Mr. McNicol, can you  
23 advise whether the format for wildlife fauna and flora  
24 is similar to the report that's been filed as Exhibit  
25 309?

1 MR. McNICOL: A. It is.

2 THE CHAIRMAN: Mr. Ward, this report was  
3 prepared by consultant hydrogeologist or a consultancy  
4 firm Gardner Lee. Would they have been hired or  
5 retained by one of the groups or by the Ministry to  
6 prepare a report like this?

7 Like, they would not be one of the groups  
8 who would be on that other list you gave us, would  
9 they? They are not one of the sub-committee groups?

10 MR. WARD: No, they are not, no.

11 THE CHAIRMAN: How would they get  
12 involved? Would one of the sub-committee groups hire  
13 specifically these consultants?

14 MR. WARD: Right, that's how --

15 MR. COSMAN: Mr. Chairman, if you look at  
16 the last page I think it might be of assistance.

17 THE CHAIRMAN: All right. Thank you, Mr.  
18 Cosman.

19 MR. WARD: Okay, in the acknowledgements,  
20 yes. The World Wildlife Fund funded this one, right.

21 MR. FREIDIN: Q. Mr. Ward, in your  
22 evidence and in your curriculum vitae you indicated  
23 that you have been involved in timber management  
24 planning in the past and that that experience dealt  
25 with both the present timber management planning

1 process and its predecessor as well; is that correct?

2 MR. WARD: A. That's correct, yes.

3 Q. And that your involvement was as a  
4 regional biologist involved primarily on  
5 interdisciplinary review team on plans being prepared  
6 in the district and that you also were involved as a  
7 district fish supervisor and your main responsibility  
8 there was preparing prescriptions to protect fish  
9 habitat?

10 A. That's correct.

11 Q. Could you indicate to the Board  
12 whether the people in the positions that you have held,  
13 the regional biologist or district fish and wildlife  
14 supervisor, whether the people in those positions is  
15 different today than it was when you first became  
16 involved in timber management planning?

17 A. Whether the positions are different  
18 or... Can you repeat that question?

19 Q. Whether there have been any changes  
20 in the involvement of the regional biologist or the  
21 district fish and wildlife supervisor over this time?

22 A. Well, certainly in terms of -- as a  
23 regional specialist it has changed now that the timber  
24 management planning process requires the signature of  
25 the regional director when a timber management plan is



1 produced and the regional director -- I am a staff  
2 person providing advice to the regional director so he  
3 has me to evaluate the timber management plans. He has  
4 to sign as to whether they are in fact following the  
5 fisheries guidelines and the policy that's been signed  
6 by the Deputy Minister.

7 This is fairly, relatively recent. But  
8 when I first went into Kenora and there were timber  
9 management plans being prepared we didn't have - that  
10 was 1980 - we didn't have regional reviews team. They  
11 have been developed over the last three or four years  
12 in the northwest region. So that is something that is  
13 changing.

14 In terms of district as a fish and  
15 wildlife supervisor, it is my role as -- that role  
16 would have changed as well because of staffing changes  
17 that have occurred.

18 When I went to Red Lake as a fish and  
19 wildlife supervisor I was -- we didn't have a district  
20 biologist on staff. Because of my fisheries  
21 background, I had the role of fisheries biologist as  
22 well as supervising and administering the fish and  
23 wildlife program. We did have a contract wildlife  
24 biologist on staff that helped with wildlife  
25 prescriptions.

1                   Now, in the last year we have got a  
2     fisheries biologist on staff in Red Lake District and  
3     we also have what we call integrated resource  
4     management technician positions established in the last  
5     two or three years in districts in the northwest  
6     region, they are also involved with timber management  
7     planning.

8                   Now, the fish and wildlife supervisor in  
9     Red Lake has two staff under him that are more involved  
10    with timber management planning and developing  
11    prescriptions than I was there. So that has changed.

12                  In other words, we are getting, you know,  
13    the staffing increases in the fish and wildlife program  
14    to handle our input into timber management planning.

15                  MR. MARTIN: Are there biologists in  
16    every district?

17                  MR. WARD: I believe we have an  
18    interrogatory that's in response to that, don't we, in  
19    terms of listing all the staffing foresters and  
20    biologists that are required. I am not too sure of the  
21    answer to that. In our region we have a biologist in  
22    every district.

23                  MR. FREIDIN: Yes, if you look at Exhibit  
24    289. Do you have that, Mr. Martel?

25                  MR. MARTEL: Yes, I do.

1                   MR. FREIDIN: If you look I think at the  
2 second page, there is a listing by district in the area  
3 of the undertaking and the last column on the right is  
4 biologists and indicates how many biologists are  
5 currently, as of the date of this particular document,  
6 which is October the 19th, 1988 have a biologist -- one  
7 or more biologists.

8                   MR. MARTEL: Thank you.

9                   MR. FREIDIN: Q. Mr. Ward, has there  
10 been any change in the approach that the fisheries  
11 people have taken in terms of protecting the fisheries  
12 resource through the development of prescriptions over  
13 that time period?

14                  MR. WARD: A. Yes. In 1980 we didn't  
15 have anything like the fish habitat guidelines to give  
16 direction to district staff on how to handle timber  
17 management activities on the shoreline of lake trout  
18 lakes or walleye lakes or so on.

19                  Actually, sort of a first draft of those  
20 guidelines I think was developed by John Allin in 1981  
21 and we have had subsequent drafts since then, as we  
22 have gained experience in implementing these guidelines  
23 and actually in terms of how the feedback that comes  
24 from the field comes back to the regions, goes back to  
25 head office where John Allin is located in terms of



1 getting new drafts out.

2 So, now that the policy has been approved  
3 and that we have a final version of the guidelines,  
4 certainly it is easier, I would say, for fisheries  
5 staff to provide input into timber management plans and  
6 I think their input is more effective now than it was  
7 because we have a document like that.

8 Q. How do you assess whether you have  
9 been effective as a fisheries biologist on a timber  
10 management planning team?

11 A. Well, I would -- when I look at  
12 timber management plans coming into the region, I look  
13 at the kinds of prescriptions that are developed on the  
14 lakes, the numbers of lakes that they would develop  
15 prescriptions for, and whether they have got good  
16 rationale for those prescriptions, where they allow  
17 cutting to the shoreline.

18 In other words, have they surveyed the  
19 lake, have they had a map produced of critical habitats  
20 and, therefore, they know there aren't any critical  
21 habitats there, therefore, it is okay on a warm water  
22 lake to allow cutting there. I am looking at that kind  
23 of thing.

24 In the past we may not have bothered with  
25 lakes that were 50 hectares in size. Actually, we had

1 a regional procedure at one time that said, you know,  
2 in terms of trying to implement where the cut-off is  
3 going to be, we only looked at lakes down to 50  
4 hectares in size. It was, again, a regional sort of  
5 directive.

6 When I went to Red Lake, we were looking  
7 at lakes down to basically about 25 hectares in size  
8 just in terms of the number of lakes that we had and  
9 the pressures of trying to determine prescriptions on  
10 those lakes.

11 The reason I looked at 25 hectare lakes  
12 is that the smallest lake that we had walleye in was 34  
13 hectares and I felt, and I still do, that the most  
14 sensitive critical habitat is those rock/rubble areas  
15 that have a lot of interstitial spaces that walleye use  
16 for spawning and I don't want any sediment and I don't  
17 want any organic material going in there.

18 So I figured that as long as we looked  
19 and provided -- applied the guidelines to lakes down to  
20 25 hectares in size we would be protecting the walleye  
21 populations in Red Lake District.

22 But now with the guidelines coming out  
23 and with, I guess, negotiations with the Ministry of  
24 the Environment to try and protect the water quality as  
25 well as just fish habitat, we are looking at lakes down

1 to 10 hectares in size. We are looking at headwater  
2 lakes, so we are including in the umbrella, I guess, a  
3 much wider variety of lakes than we did in the past.  
4 So I feel that's been a positive change.

5 Q. Have there been any other positive  
6 changes which, in your view, have allowed you to be a  
7 more effective member of a timber management planning  
8 team?

9 A. Yes. I think in terms of the  
10 attitudes of both fish and wildlife and forestry staff  
11 both within Ministry and within companies have become  
12 aware of other uses of the forest out there, and they  
13 are aware of concerns that logging can have impact on  
14 fisheries and, therefore, when a fisheries biologist,  
15 wants a reserve on a spawning bed, a lot of people  
16 accept now that at face value.

17 In the past, we used to have quite a lot  
18 of arguments and, I mean, it wasn't just necessarily an  
19 argument between a biologist and a forester, there were  
20 arguments amongst biologists about whether logging in  
21 actual fact impacted on critical fish habitat.

22 And I think with the development of the  
23 guidelines and in terms of the review of the  
24 literature, and as we have gained experience, that I  
25 see -- I have less arguments now with people in terms



1 of trying to push that message forth right from the  
2 Assistant Deputy Minister from northern Ontario down to  
3 the unit forester in the field.

4 As you know, having that awareness and I  
5 guess you could call it awareness of integrated  
6 resource management that's occurring in our Ministry,  
7 that has been developing the last decade, I see that as  
8 a positive change.

9 Q. I only ask you once more: Are there  
10 any other ones that you would like to refer to?

11 A. Well, I think in terms of fisheries,  
12 we are -- you know, I see the guidelines as being a  
13 positive thing, I see that our lake survey manual and  
14 our methods of trying to document critical habitat and  
15 mapping them has been improved.

16 I have been an instructor on the lake  
17 survey course for the last eight years, I see that we  
18 are improving it all the time. As we are going through  
19 these hearings I can see that there are other changes.  
20 I learned that we have to make some more changes to  
21 modify and adapt the manual to cover off our concerns.

22 So I see our training program of our lake  
23 survey cruise being better. We now have them measuring  
24 slopes with clinometers; we didn't in the past. The  
25 map -- or the exhibits of the lake survey maps that I

1       showed, I use that as a training tool. I use the  
2       Kenora District maps and I give copies to all the crew  
3       members to take back to their districts to say: Look  
4       it, this is the kind of habitat mapping that is useful  
5       for fisheries biologists and for timber management  
6       planning and that, you know, you should be doing that  
7       back in your district.

8               The other thing, besides the training and  
9       improving fisheries, is that I think our public  
10      involvement program is getting better. When I first  
11      went up into Kenora and I saw the advertisement for  
12      timber management planning open houses, you look at  
13      that ad and I could never figure out, you know, what  
14      they were talking about in that ad.

15             They never explained that we are going to  
16      be talking about where we are going to cut to the  
17      shoreline of lakes, where roads are going to be  
18      located. It was sort of, you know, we are going to  
19      talk about this timber management plan, you know it is  
20      going to be for this five-year period.

21             Now, the ads are a lot larger, they are  
22      more explicit in the kind of material that's going to  
23      be covered and that way I think we are getting better  
24      input from the public. Whether it is attendance at  
25      open houses or not, or whether it is input from the

1 public in the day-to-day contact that districts have  
2 with the public, I think that's improving.

3 I have seen a change in tourist operators  
4 in terms of their input into timber management  
5 planning. Their initial concern was the impact of  
6 access on their lakes. Then I saw as well some of them  
7 were concerned about aesthetics, let's not cut the  
8 shoreline, we need this wilderness, this is what we are  
9 selling to our clientele up there.

10 I haven't seen them, you know, talking  
11 about: Well, we need to protect fish habitat because  
12 our business depends on having healthy fish populations  
13 out there because that's what the anglers are coming  
14 for, but I see that awareness now coming out in tourist  
15 operators is a clientele because I see that in other  
16 aspects of our fisheries management program.

17 I see them involved with habitat  
18 rehabilitation projects through our community fisheries  
19 involvement program. Kenora District alone I think we  
20 have about a dozen tourist operators that have been  
21 involved with the community fisheries involvement  
22 program and rehabilitating walleye spawning areas.

23 So that awareness is increasing and I see  
24 that as always a positive thing affecting our fisheries  
25 input into timber management planning.



1 THE CHAIRMAN: Mr. Ward, what kind of  
2 increased involvement are you finding on the fisheries  
3 side from the native communities over the years?

4 MR. WARD: In terms of native  
5 communities, I must -- I can't think of any increased  
6 involvement at all in terms of fish management  
7 planning. I know we have got -- in terms of our public  
8 involvement programs for fish management plans, we have  
9 involved native communities. There may be others.

10 Gord? Do you have an idea, Gord, on that  
11 one?

12 MR. PYZER: Just a comment, but certainly  
13 Grassy Narrows is one example. During the production  
14 of our fish management plan we had discussions with the  
15 chief and council at Grassy and went one step beyond  
16 anything else we did in our district.

17 In fact, we took the public open house,  
18 if you will, right to the reserve and not only had an  
19 open house for the fisheries management plan but we  
20 actually conducted a meeting where reserve people could  
21 come and ask questions.

22 We have actually spent a lot of work with  
23 Grassy Narrows Ball Lake Lodge on the English River  
24 system, Barney Lam's old lodge, and we have had a  
25 tremendous amount of involvement with them because of

1 the old -- the historic mercury problem there.

2 I see the potential within five years  
3 that Grassy Narrows may be operating the largest  
4 tourist resort based on fisheries in Kenora District.  
5 That wasn't happening five years ago.

6 We are doing the very same thing right  
7 now with the Whitedog or the White Fish Bay Indian  
8 reserve, looking at a very major tourist development  
9 using walleye, northern pike on Lake of the Woods.  
10 They are actually talking to us about transferring some  
11 of their commercial fish quotas to be used through the  
12 tourist outfitting business just simply because of  
13 socio-economic benefits and spinoffs.

14 I guess the short answer to that question  
15 is: I see some very positive signs.

16 THE CHAIRMAN: Okay. One other question,  
17 Mr. Ward. You may not know the answer to this.

18 Are there any native peoples employed by  
19 the Ministry as biologists, either fish or wildlife,  
20 that you are aware of?

21 MR. WARD: Not that I am aware of. I  
22 know we have a conservation office in Sioux Lookout  
23 that's native, but I don't know of any biologist, no.

24 MR. MARTEL: Can I ask one question. I  
25 want to back up for a moment.

1 Did the backlash several years ago over  
2 the proposed fishing agreement, is that part of the  
3 reason why the native community hasn't come forward,  
4 let's say, to get involved more directly with the fish  
5 management?

6 MR. PYZER: Gee, I don't know if I would  
7 want to leave you with the impression that they are not  
8 more involved, I think they are quite involved.  
9 Certainly it is an individual band-by-band -- the same  
10 as it is any other community and I can only relate to  
11 my own district.

12 Grassy Narrows has taken an absolutely  
13 tremendous involvement in the production of our  
14 fisheries management plan. The White Fish Bay Band,  
15 Shoal Lake Band, we have had significant discussions  
16 with them and all the problems that are occurring on  
17 Shoal Lake and have occurred there, in fact we have a  
18 closed fishery there right now.

19 And they did participate with us in terms  
20 of spawning ground rehabilitation at Wah and what was  
21 going on at Wah there in terms of the spawning area. I  
22 wouldn't want to leave you with the impression that  
23 they don't become involved, they certainly do.

24 In fact we had a significant -- I  
25 specifically recall meeting with Tommy Keesik at the



1 Kenora District open house on our fisheries management  
2 plan from Grassy Narrows. They actually came to some  
3 of the other sessions as well as their own. So I think  
4 there is a good involvement, maybe not as much as we  
5 would all like, but I do see it increasing.

6 I would say -- in fact, we put a press  
7 release out during the production of our district  
8 fisheries management plan saying that we were concerned  
9 that the average man off the street wasn't coming in.  
10 We had tremendous response from the tourist industry.  
11 So I wouldn't want to categorize it as one group or  
12 another. Some are extremely good and some are not as  
13 good.

14 MR. WARD: I think you can see that in a  
15 lot of different user groups like even bait fishermen,  
16 some of them are more interested in our timber  
17 management planning process than others, the same with  
18 trappers. I don't know what it is that, you know,  
19 makes some people interested and some others. Maybe  
20 that some have had, you know, some experience that  
21 cause them to be concerned with it or else we have  
22 talked to them more directly.

23 But, generally, with bait fishermen, we  
24 send them all a registered letter indicating that, you  
25 know, timber management activities are occurring in

1 their area of operation and come in and talk to us  
2 about your bait lakes there because that is information  
3 we don't have but they know a lot about those fisheries  
4 resources there.

5 Some of them are quite active, others  
6 aren't. Some of them have different feelings about  
7 timber harvesting. Some like the roads being built to  
8 the lakes, others like the shoreline to be partly cut  
9 because it is easier for them to get an aircraft on and  
10 off the lake; others do not want any roads nearby  
11 because it brings in residents anglers and their traps  
12 are affected or lifted by residents, they help  
13 themselves to their minnows.

14 So you get different opinions, you know,  
15 and so you can only go with, you know, in terms of  
16 their input, what they expect.

17 MR. FREIDIN: Q. Mr. Ward, you made  
18 reference that in the early 1980s there weren't any  
19 guidelines similar to the ones that you have got now.

20 What was the approach back then prior to  
21 having these guidelines to protecting fisheries, to  
22 developing prescriptions around water bodies or  
23 adjacent to water bodies to protect fisheries values?

24 THE CHAIRMAN: Mr. Freidin, is it of  
25 major relevance to go back in time if you have moved

1 beyond that? In other words, if we are looking in the  
2 late '80s and you have various guidelines in place, is  
3 it necessary for the Board to go back to '80 and prior  
4 to '80?

5 MR. FREIDIN: I think it is important to  
6 go back, if only briefly, because there are certain  
7 things which were done in the past which I believe -  
8 and I am only anticipating - but I believe will be in  
9 fact looked upon by certain parties to this hearing as  
10 being things which shouldn't have changed, that they  
11 would like to return in some respects to the old way of  
12 doing business.

13 THE CHAIRMAN: Briefly.

14 MR. FREIDIN: Q. So, Mr. Ward, could you  
15 address my question?

16 MR. WARD: A. Well, I think you are  
17 referring to, I guess, some people call it the doughnut  
18 principle around lakes where you have standing timber  
19 around, you know, sort of the major water bodies and I  
20 am not too sure where the cut-off would occur.

21 Undoubtably some lakes that were 100  
22 hectares or 115 hectares in size could have been cut to  
23 the shoreline. If they had tourism interests and canoe  
24 route interests on those rivers or lakes, they probably  
25 had 400 feet, 120 metres of standing timber.



1 I think from a fisheries perspective  
2 that, you know, for those lakes that are protected, it  
3 may not have been the best thing because they may have  
4 protected 400 feet around the shoreline or lake but  
5 they forgot all about the tributaries of that lake, the  
6 streams and rivers coming into them that may have been  
7 bringing in sediment, bringing in nutrients, might have  
8 been spawning areas for fish that are resident in the  
9 lake.

10 I think our approach now where we look at  
11 all those things is -- and you find if it is a flat  
12 shoreline that 30 metres of standing timber is  
13 sufficient to protect the spawning bed, there on the  
14 lake, I would rather have some of that remaining, you  
15 know, 90 metres of timber tied up on the back shore in  
16 the watershed itself along some of the tributary  
17 streams that may protect spawning areas and help to  
18 improve water quality for that lake.

19 So I think rather than the automatic  
20 doughnut around the lakes, it is much more effective to  
21 look at the whole watershed and look at the tributaries  
22 and look at the lakes and look at where your buffers  
23 are in place, not only just for fisheries habitat but  
24 also from a wildlife perspective because the wildlife  
25 managers are looking at providing winter shelter in the

1 back shore and we can tie that in with water quality  
2 protection for fisheries as well.

3 And so there is a sort of integrated  
4 resource management thing as well in the whole  
5 watershed, rather than just around the shorelines of  
6 the lakes.

7 Q. Okay. And a recent development has  
8 in fact been the development of fisheries management  
9 plans. I understand that not all districts have them  
10 in place at the present time?

11 A. No, but I think within the next year  
12 that all the districts will have a fisheries management  
13 plan in place. In the northwest region, all six of our  
14 districts completed plans this summer.

15 Q. All right. And am I correct that  
16 although not all districts have one in place at the  
17 present time, those that don't have one in place are in  
18 the process of actually developing one?

19 A. That's correct.

20 Q. And can you advise whether having a  
21 fisheries management plan affects your ability to have  
22 meaningful input into timber management planning?

23 A. It has, it enables us to provide  
24 better input into exploitation control of fisheries  
25 resources, not so much in terms of habitat protection.

1 And the reason I say that is...

2 Q. Before you go into that, you had  
3 better explain what exploitation control is?

4 A. Okay. Well, harvest control or  
5 controlling the type of harvest that occurs on lakes,  
6 and I will give some examples.

7 But in terms of the habitat protection  
8 bit, in terms of our guidelines and our policy, we  
9 protect habitat whether we have fisheries management  
10 plans in place or not, but what fisheries management  
11 plans enable us to do: It's a plan looking into the  
12 future where we want to create fisheries, where  
13 fisheries are either exploited or they are  
14 overharvested, where you are providing logging roads  
15 into an area or in accessing lakes.

16 If you access a lake with a road you are  
17 going to increase the exploitation stress, you are  
18 going to increase the harvest, more anglers are going  
19 to go in there.

20 So the plan tells us that: Hey, these  
21 are small lake trout lakes are very sensitive to  
22 overexploitation, if their plans to harvest timber in  
23 those watersheds, we want to keep roads away from the  
24 shorelines of those lakes.

25 And, for example, the one plan that we



1 developed for Lac Seul. We felt there was enough  
2 development on Lac Seul with the existing tourist  
3 lodges and existing use by resident anglers, we didn't  
4 want to create any more easier access to Lac Seul, we  
5 have no -- we have in the management plan for Lac Seul,  
6 no all-weather roads, access roads within 650 metres.  
7 Any roads that go closer to the shoreline of Lac Seul  
8 to access timber have to go sort of through a natural  
9 trap whether it be across a stream where we can remove  
10 a culvert or across a wetland that we can access in the  
11 wintertime only and in the summer time you won't get  
12 access across that thing because, you know, it is not  
13 passable.

14 So that is the kind of approach that we  
15 are looking at in terms of fish management planning in  
16 terms of controlling exploitation. As well I am  
17 talking about reducing exploitation. As well we can --  
18 some areas we have identified as an area where we want  
19 to increase exploitation, we want to say these are  
20 underutilized fisheries, we want to maybe provide  
21 fisheries for resident anglers.

22 We can -- in the timber management  
23 planning process as they determine the location of  
24 roads, we can say: Well, let's try and get some roads  
25 closer to these lakes, they can provide some fisheries

1 opportunities for our resident anglers and we may even  
2 decide in some of our other programs to build some  
3 access points.

4 I know in fact in Red Lake District we  
5 are looking at a couple of lakes north of Red Lake  
6 Corallen and Alfred Lakes as providing some walleye  
7 pike fisheries for resident anglers and it was the  
8 access was from a timber access road.

9 MR. FREIDIN: Mr. Chairman, those are my  
10 questions for Mr. Ward.

11 THE CHAIRMAN: Thank you.

12 MR. FREIDIN: If I could just have a  
13 moment to perhaps pull some paper or change the paper.

14 THE CHAIRMAN: It is the Board's  
15 intention to rise for approximately an hour for lunch.  
16 If you want to stop at this point, we could rise for an  
17 hour and 15 minutes. We would come back at 1:00 p.m.  
18 and then continue on with an afternoon break until  
19 4:00.

20 MR. FREIDIN: All right, thank you. I  
21 think it is a good idea.

22 THE CHAIRMAN: Thank you.

23 ---Luncheon recess at 11:45 a.m.

24 ---Upon resuming at 1:10 p.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 MR. FREIDIN: Q. Mr. McNicol, could you  
3 indicate to the Board what the main messages of your  
4 evidence is going to be today?

5 MR. McNICOL: A. Yes, and there are  
6 multiple messages that I would like to try to impart to  
7 the Board and the parties.

8 The first is is that as a wildlife  
9 biologist in Thunder Bay District and this is common of  
10 biologists right across the province currently in the  
11 area of the undertaking, we are actively involved in  
12 the timber management planning process. I spend  
13 currently about 30 per cent of my time doing nothing  
14 else.

15 This is not a reactive process in whole.  
16 By that, I mean, we are not looking always to  
17 circumvent impacts on particular areas of concern from  
18 a wildlife perspective. This is very much a proactive  
19 process, especially vis-a-vis wildlife management. We  
20 can be creative, if you will, in terms of habitat  
21 enhancement and creation through active input into the  
22 timber management planning process.

23 There are a number of sources of  
24 information that we call upon to ensure that areas of  
25 concern are addressed in the timber management planning



1 process. The broad categories for these sources of  
2 information are regularly collected, specially  
3 collected and incidentally collected information.

4 This information is often collected  
5 cumulatively over time and present a broad database  
6 that we can bring to bear in the timber management  
7 planning process. I think the message has been already  
8 mentioned by Mr. Clark, that we do not start from  
9 ground zero when we enter into a timber management  
10 planning process.

11 It will become obvious to the Board in  
12 the presentation of the direct evidence that we do not  
13 collect all information for all wildlife species in all  
14 places at all times.

15 There is a biological rationale for this  
16 approach and it is important for the Board and the  
17 parties to recognize that we do this consciously and  
18 recognizing our mandate as a responsible management  
19 agency responsible for the protection of the flora and  
20 fauna of the Province of Ontario.

21 Q. Now, Mr. McNicol, do you have a copy  
22 of the document Timber Management Guidelines for the  
23 Provision of Moose Habitat in front of you?

24 A. I do.

25 MR. FREIDIN: Mr. Chairman, I think all

1 the parties and the Board have brought their copy of  
2 that document, but I would like to file that document  
3 as the next exhibit.

4 THE CHAIRMAN: Exhibit 310.

5 ---EXHIBIT NO. 310: Timber Management Guidelines for  
6 the Provision of Moose Habitat.

7 MR. FREIDIN: Q. And do you also have in  
8 front of you a memorandum from Mr. D.W. Simkin, the  
9 Director of the Wildlife Branch to certain individuals  
10 in the region and in the districts dated November the  
11 10th, 1987?

12 MR. McNICOL: A. I do.

13 MR. FREIDIN: I would like to mark that  
14 as the next exhibit. .

15 THE CHAIRMAN: Do we have that?

16 MR. FREIDIN: No, I am going to provide  
17 it here.

18 THE CHAIRMAN: Exhibit 311.

19 ---EXHIBIT NO. 311: Letter dated November 10, 1987  
20 from D.W. Simkin, Director of  
Wildlife Branch.

21 MR. FREIDIN: (handed)

22 THE CHAIRMAN: Thank you.

23 MR. FREIDIN: Was that 311, Mr. Chairman?

24 THE CHAIRMAN: That's correct.

25 MR. FREIDIN: Q. Mr. McNicol, could you

1 indicate to the Board what this memorandum from Mr.  
2 Simkin to the regional biologist and fish and wildlife  
3 supervisors is?

4 MR. McNICOL: A. It speaks to the status  
5 of various habitat management guidelines in the  
6 Province of Ontario.

7 Q. And does the document refer to  
8 habitat management guidelines which are in existence or  
9 in draft form within the Ministry of Natural Resources?

10 A. That's correct.

11 Q. The Exhibit No. 310, the Timber  
12 Management Guideline for the Provision of Moose  
13 Habitat, I understand that that is referred to in the  
14 EA Document as a provincial guideline?

15 A. That's correct.

16 Q. And there are a number of documents  
17 which are listed, starting on page 2, which are  
18 resource manuals?

19 A. That also is correct.

20 Q. All right. Can you, in a brief way,  
21 indicate to the Board the differences between those two  
22 documents, those two types of documents? I believe  
23 there is a reference, if you need to refer to that, on  
24 the second page of the memo.

25 A. Exactly. If the memo is turned over



1 the next page following gives a definition of the  
2 status categories, details provincial guideline:

3 "A document prepared from an MNR  
4 corporate perspective reviewed internally  
5 and externally and approved by the  
6 Executive Management Committee.  
7 These specific guidelines are to be  
8 followed."

9 Now, when they say "are to be followed",  
10 it means by those at the field level that are  
11 responsible for the implementation of those guidelines.  
12 It can be superseded by another approved document on  
13 the same topic.

14 Resource manual represents the best  
15 information available at the present time. That is  
16 prepared from a wildlife specialist's perspective and  
17 is approved by the Branch Director, that being the  
18 Wildlife Branch and it is to be used as a reference by  
19 field staff when dealing with habitat issues.

20 Q. Now, I understand later panels will  
21 be going into more detail in terms of the differences  
22 between these kinds of documents and the use of those  
23 documents will be dealt with in panels which are  
24 dealing with the actual timber management activities?

25 A. That's correct.

1 Q. Are there any corrections that need  
2 to be made to this document?

3 A. If we look to page 3 at the top of  
4 the page, the left-hand column, you will note that  
5 there are two documents. The first two: Guideline for  
6 Moose Habitat Management in Ontario followed by  
7 Guidelines for Moose Habitat in Timber Management,  
8 these were two earlier versions of the provincial  
9 guideline that the Board and parties have before them  
10 now, Timber Management Guidelines for the Provision of  
11 Moose Habitat.

12 So, in essence, those two documents  
13 previously mentioned are revoked and superseded by  
14 Timber Management Guidelines for the Provision of Moose  
15 Habitat.

16 Q. Could you turn to page 308 of the  
17 witness statement, that would be page 308 of Exhibit  
18 266A.

19 A. I have it.

20 Q. And at page 308 we find a copy of the  
21 Wildlife Information for Use in Timber Management  
22 Planning Policy. And, on the following three pages, we  
23 have a copy of the procedure in relation to the  
24 Wildlife Information for Use in Timber Management  
25 Planning Policy.

1 A. Correct.

2 Q. Could you advise whether there is any  
3 relationship between those two documents, the policy  
4 and the procedure that I have just referred to, and the  
5 Moose Habitat Guidelines, Exhibit 310, and the other  
6 habitat guideline which are described as resource  
7 manuals listed in Exhibit 311?

8 A. Briefly. If we look at page 308, the  
9 policy, it speaks in the second paragraph to:

10 "Habitat data will be collected for  
11 threatened as well as endangered species  
12 designated by RRO287/80 under the  
13 Endangered Species Act and Moose or  
14 Deer."

15 Continuing:

16 "For most other species, specific habitat  
17 data will not be required since the  
18 habitat of other species will be  
19 adequately provided by general vegetative  
20 and structural diversity. Habitat data  
21 for specified other species will be  
22 collected where deemed necessary."

23 If we turn the page now to page 309, the  
24 procedural document speaks to how the policy is to be  
25 implemented. If we look to the first bullet point



1 under implementation of policy:

2 "The Wildlife Information Program to  
3 determine the general occurrence of  
4 wildlife species and the site-specific  
5 occurrence of special wildlife features  
6 in the planning area, to assist in  
7 deciding which wildlife species are to be  
8 considered in the timber management  
9 planning, to identify habitat at present  
10 or future high value to the species to be  
11 considered, to assist managers in  
12 applying habitat guidelines or other  
13 means of protection or enhancement."

14 If we turn to page 310:

15 "To assist those individuals that are  
16 looking to implement the Moose Habitat  
17 Management Guidelines."

18 If we look to Item B on page 310, it  
19 identifies those features:

20 "Vegetative features that should be  
21 looked for to identify areas of high  
22 present or future value as wintering  
23 habitat and also aquatic feeding areas,  
24 calving sites and mineral licks."

25 That is the example of how the procedural

1 document helps in the implementation of the policy  
2 concerning collection of wildlife information.

3 Q. Back on page 308 where it indicates  
4 at the end of the first paragraph that information  
5 about -- well, where it indicates that information is  
6 needed where -- or where it is needed in order to make  
7 appropriate decisions during timber management  
8 operation, that there must be adequate data to  
9 implement Ministry habitat guidelines.

10 And does that reference to habitat  
11 guidelines refer to both Exhibit 310 and the documents  
12 listed in Exhibit 311?

13 A. It does, Mr. Simkin's memo is quite  
14 clear on that point.

15 Q. The Environmental Assessment Document  
16 at page 188 line 28 to 32 indicates that:

17 "For provincial guidelines there are  
18 minimum information requirements."

19 Can you advise me: Are there minimum  
20 information requirements in the Moose Habitat Guideline  
21 which has been identified as a provincial guideline?

22 A. There are minimum habitat information  
23 requirements implicit in the guidelines.

24 Q. Could you...

25 A. And also in the procedural document.

1 If I could direct the Board's attention to pages 309  
2 again, about half way down the page, starting with  
3 "accordingly":

4 "Accordingly to provide wildlife-related  
5 input to timber management planning, the  
6 district manager will..."

7 Not may but will:

8 "...review information from a variety of  
9 sources including..."

10 And there is a list of sources here that  
11 he will draw upon. I would like to turn your attention  
12 to page 310 as well, Item B:

13 "More specifically, the district manager  
14 will, in order to implement moose habitat  
15 guidelines, identify areas of high  
16 present or future value as a wintering  
17 habitat, and identify moose aquatic  
18 feeding areas, calving sites, mineral  
19 licks."

20 This is the required minimum information  
21 for implementation of the guidelines.

22 Q. The policy refers in the first --  
23 pardon me, or the second paragraph to habitat data  
24 being collected for endangered species designated under  
25 the Endangered Species Act.



1 MR. FREIDIN: And, Mr. Chairman, I would  
2 like to file a copy of the Endangered Species Act with  
3 what I believe is the most up-to-date regulation which  
4 lists the species under that Act. (handed)

5 THE CHAIRMAN: Exhibit 312.

6 ---EXHIBIT NO. 312: Copy of Endangered Species Act  
7 with up-to-date list of species.

8 MR. FREIDIN: Q. Now, the policy  
9 indicates that habitat will be collected for threatened  
10 as well as endangered species designated under the  
11 Endangered Species Act. But when we look at the Act,  
12 the Act does not speak of threatened species as a  
13 particular classification.

14 In light of that, can you advise what  
15 threatened species are understood to be within the  
16 context of the policy?

17 MR. McNICOL: A. The threatened species  
18 referred to are those designated as threatened under  
19 Ontario's designations. If the Board can harken back  
20 to my presentation of COSEWIC and the  
21 inter-relationship between COSEWIC and Ontario's  
22 designations, threatened species refer to Ontario's  
23 designation of threatened species.

24 THE CHAIRMAN: Is that one of the reasons  
25 why Ontario has used the word threatened, so it will

1 conform with the Act?

2 MR. McNICOL: Again, the Act does not  
3 speak to threatened but to endangered. The policy  
4 speaks to threatened; the Act speaks only to  
5 endangered.

6 THE CHAIRMAN: What about the words  
7 threatened with extinction?

8 MR. McNICOL: Under Ontario's  
9 designation?

10 THE CHAIRMAN: No, under the Act?

11 MR. McNICOL: This is the Ontario  
12 definition of that.

13 MR. FREIDIN: There is no definition as  
14 to what threatened with extinction means other than  
15 anything that shows up in the regulation is deemed to  
16 be, by reason of the -- if you look at Section 2 of the  
17 regulations it says:

18 "The species of flora listed in Schedule  
19 2 are declared to be threatened with  
20 extinction."

21 So there is really no definition as to  
22 what that means and what relationship it does or  
23 doesn't have to any of those sort of definitions of  
24 categories that we have through COSEWIC or through --

25 THE CHAIRMAN: I understand the

1 difference between the definitions used by COSEWIC and  
2 Ontario, but what I was asking was: If in the Ontario  
3 definition they designate it as threatened, is one of  
4 the reasons for that so that when you tried to apply  
5 the Endangered Species Act it would fall within the  
6 wording of threatened with extinction? That was the  
7 question.

8 MR. McNICOL: I guess the easy answer to  
9 that is no because of the -- it is an unfortunate use  
10 of the word threatened in the Endangered Species Act  
11 because it is not to be interpreted literally.

12 THE CHAIRMAN: Right.

13 MR. FREIDIN: Q. In other words, in  
14 terms of the policy where it says:

15 "Habitat data will be collected for  
16 endangered species designated under the  
17 Endangered Species Act...",  
18 would that include the species identified in the  
19 regulation to the Endangered Species Act?

20 MR. McNICOL: A. That is correct.

21 Q. Can you tell me whether, for the  
22 purpose of the policy -- for the purposes of  
23 implementing the policy, what is the interpretation  
24 given by the Ministry to the words where it says that:  
25 "Habitat data will be collected for threatened



1 species"?

2 A. Again, when the word is used in that  
3 context in this policy it is relating to Ontario's list  
4 of threatened species.

5 Q. Okay, thank you. Now, in terms of  
6 collecting data for threatened as well as endangered  
7 species, can you tell me how the Ministry goes about  
8 doing that? Is there some sort of special survey  
9 undertaken to look for this sort of habitat, or just  
10 how is it done?

11 A. In some cases that is the case. Most  
12 often these things are brought to our attention  
13 incidentally through information collected from some of  
14 our working peers, from members of the public.

15 Probably the most common species that we  
16 receive information for that falls under the endangered  
17 category would be bald eagles in Ontario, and much of  
18 that information is collected incidentally.

19 However, in some jurisdictions, Kenora  
20 District I believe conducts special surveys for that  
21 particular species in their district.

22 Q. And is that sort of approach the  
23 exception as opposed to the rule?

24 A. In my experience, yes.

25 Q. Now, Mr. Pyzer, are you aware as to

1       why in Kenora District a specific survey has been  
2       undertaken in relation to bald eagles?

3               MR. PYZER: A. Primarily because Kenora  
4       District has such a large number of bald eagles. The  
5       research that has been carried out there is by Dr.  
6       Greer from University of North Dakota and people may  
7       have seen him on the Johnny Carson Show and whatnot.

8               He is probably the world's foremost  
9       authority on bald eagle and the fact that we are close  
10      to North Dakota and close to him and have such a large  
11      population, that's why he studied them. And we helped  
12      fund his research and support his -- from an  
13      operational point of view provide boats, motors,  
14      housing, accommodation, those sort of things, in return  
15      for the information.

16              Q. And I understand that some reports  
17      from Mr. Greer commence at page 383 of the witness  
18      statement and sort of take up the rest of the document  
19      up to page 392?

20              A. I am sorry?

21              Q. Some of the work by Mr. Greer from  
22      the North Dakota State University is in fact included  
23      in the witness statement at pages 383 to 392?

24              A. That's correct.

25              Q. When you say that information is

1 about these species, threatened or endangered, is  
2 usually obtained incidentally, what do you mean by  
3 that?

4 MR. McNICOL: A. Much of the information  
5 comes from sightings by members of public, from our  
6 forest management staff in the field, company  
7 personnel, tourist operators, trappers.

8 When I use the word incidentally, what I  
9 am saying is is that there is not a regular survey that  
10 we have initiated that identifies these locations or  
11 species in a particular location.

12 Q. And is there a reason for that?

13 A. The reason that it is not done as a  
14 matter of course in the area of the undertaking, first,  
15 we have to look at the risk of harm, if you will, for  
16 many of these species and we will be dealing with this  
17 a little bit later, I believe, in the evidence.

18 But, by and large, in the area of the  
19 undertaking there are few species on the endangered  
20 species list that are at imminent risk, if you will, in  
21 the area of the undertaking from potential impacts from  
22 forest management activities. That's mostly the  
23 reason.

24 Again, to mount the type of survey on a  
25 regular basis necessary to identify many of these sites



1 without prior existing information or a suspicion about  
2 the existence of these species in a particular location  
3 would be very impractical.

4 Q. Now, in the policy, again in the  
5 second paragraph, in addition to saying habitat data  
6 will be collected for threatened as well as endangered  
7 species it says:

8 "...and moose or deer."

9 Could you explain to me why moose and  
10 deer are the two species which were chosen to be  
11 mentioned specifically in the policy?

12 A. They are referred to as featured  
13 species and this implies a concept that I don't believe  
14 the Board or parties are familiar with, and that is the  
15 featured species concept.

16 Q. And Mr. Ward I think mentioned a  
17 featured species approach in terms of fish. Could you  
18 explain -- first of all, I understand that this  
19 particular subject will in fact be dealt with in Panel  
20 10 by Dr. Eiler; is that correct?

21 A. That's correct.

22 Q. I am just wondering just - I'm not  
23 trying to take anything away from Dr. Eiler, because we  
24 will be dealing with moose guidelines in his evidence -  
25 could you just indicate, in a general way, what this

1 featured species concept is when it relates to  
2 terrestrial fauna?

3 A. Very briefly. The selection of the  
4 featured species such as moose or deer is done  
5 consciously recognizing that this particular species in  
6 its habitat requirements represents habitat  
7 requirements for a much broader range of species.

8 In other words, if you create habitat or  
9 maintain habitat for moose or deer, you are also  
10 maintaining habitat for a wide range of other species  
11 that need the same types, perhaps not at the same  
12 scale, but need the same types of diversity vegetation  
13 that these two species require.

14 Q. If we turn to page 223 of the witness  
15 statement. If I can direct you to the last full  
16 paragraph on the page, five lines down, it indicates  
17 that:

18 "Not all types of information are  
19 available for all areas or all species of  
20 fauna and flora as input to the  
21 development of individual timber plans."

22 What would you say to someone, Mr.  
23 McNicol, who approached you and indicated that they  
24 were concerned that without knowledge of their  
25 existence in advance of timber management planning and

1 implementation of plans that the value that you are  
2 unable to pinpoint on the ground will be lost or, in  
3 some way, detrimentally affected by timber management  
4 operations?

5 A. It is certainly a fair question. I  
6 would have to be honest and state that, in my  
7 experience, I have never been faced with that type of  
8 question.

9 But, in response to a question such as  
10 that, I would speak to the featured species approach as  
11 a first cut and explain that by implying that approach,  
12 again, we are creating habitat not only for the  
13 featured species, be it moose or deer, but also for a  
14 wide range of game and non-game species as well as  
15 plant life because of the mosaic of vegetation, the  
16 diversity of vegetation, the variation in stand types  
17 and age classes that are a requirement for the life  
18 requirements of this particular species.

19 Because of that approach, there are a  
20 number of other species that benefit. That would be  
21 point one.

22 Point two would be that it is necessary  
23 to understand a little bit about boreal ecology to  
24 understand why that question really is perhaps a little  
25 bit ignorant. The ignorance I guess is in an



1 understanding of how boreal forests evolve through time  
2 and the fact is that boreal forests are subject to  
3 major disturbances periodically throughout the life of  
4 the forest.

5           These disturbances can take the form of  
6 fire, windthrow, insect, disease. There are major  
7 disturbances that occur across the boreal forest over  
8 thousands of years of its existence and particular  
9 species, plant and animal species that exist in the  
10 boreal forest have evolved to adapt to that type of  
11 disturbance.

12           Now, some of these disturbances are very  
13 severe and major in terms of their impact on a  
14 particular portion of the boreal forest at any given  
15 time. As an example, in 1980 in Thunder Bay District  
16 we had the much reknowned fire of '46 which was a  
17 quarter million acre fire. It was a very hot fire and  
18 it burned over a relatively short period of time and  
19 disturbed a large chunk of Thunder Bay District.

20           But it is not unusual, in terms of the  
21 history of the boreal forest, to see that kind of major  
22 disturbance. I guess the point is that the species  
23 that exist in the boreal forest have evolved with  
24 disturbance.

25           So forest management activity - and you

1 have to look at these things in perspective - forest  
2 management activity, in terms of the scope and scale of  
3 operations, pale by comparison to some of the  
4 disturbances that have occurred over time in the boreal  
5 forest.

6 Q. In your answer, Mr. McNicol, you  
7 referred to diversity of vegetation. There is  
8 reference in your paper to the term mosaic of  
9 vegetation. Are those the same things?

10 A. They are very much related, yes.

11 Q. Could you explain what those two  
12 concepts mean in terms of wildlife management?

13 A. If I may be permitted a visual aid.

14 Q. Yes.

15 A. I am a simple person and working with  
16 simple diagrams always helps me.

17 If we look at a particular piece of  
18 boreal forest, it is broken up into different stand  
19 types. This is a natural mosaic, given that you have  
20 different speciation occurring over the land base. We  
21 may, for instance, have a hardwood stand here, a  
22 conifer stand here, a mixed wood stand there, another  
23 hardwood stand, and another conifer stand here.

24 (indicating)

25 Q. I am not sure whether this will be

1 referred to later, but just in case it is, you have  
2 indicated the conifer stands with a C, hardwood with an  
3 H, and mixed wood with an M on the document which will  
4 be marked as an exhibit, I hope.

5 A. As I say, I like to keep things  
6 simple. Now, I have mentioned that there is some  
7 speciation variation here.

8 Let's assume that this particular area  
9 now is proposed for forest management activity. This  
10 particular company does not have a market for hardwood  
11 products, birch and poplar being the primary species in  
12 the boreal forest. These two stands here are not  
13 allocated in the process, so they remain standing as  
14 mature hardwood forest. They do have a coniferous  
15 market, these areas are cut.

16 In the mixed wood stand there is a  
17 coniferous component and this area is partially cut;  
18 the coniferous component is taken out, the hardwood  
19 component remains. What we now have is a mosaic that  
20 has been enhanced, if you will, in terms of the  
21 age-class diversity that did not exist prior to this  
22 disturbance.

23 We now have young successional stands  
24 here which were not there before disturbance, we have a  
25 mature deciduous component or hardwood component here,



1 and we have a partially disturbed stand where a mature  
2 conifer has been taken out; mature residual hardwood  
3 exists and a young coniferous understorey in the  
4 residual hardwood that still remains, also exists.

5 We have introduced diversity and a mosaic  
6 of quilt work, if you will, of not only species  
7 diversity but now also age-class diversity and these  
8 components are very important in terms of wildlife  
9 diversity.

10 THE CHAIRMAN: Shall we put it in as  
11 Exhibit 323.

12 MR. McNICOL: Do we have to?

13 THE CHAIRMAN: Do you want to entitle it  
14 the simple boreal forest.

15 ---EXHIBIT NO. 313: Diagram of simple boreal forest.

16 MR. FREIDIN: Q. Mr. McNicol, could you  
17 indicate the significance of the creation of species  
18 and age diversity in terms of your wildlife management  
19 objectives.

20 MR. McNICOL: A. Very simply. It  
21 creates new niches, if you will, or small habitats that  
22 can be utilized by other species that prior to that  
23 disturbance and the introduction of that age-class and  
24 species diversity would not exist in this scenario.

25 So I guess there is a straight line

1 correlation between diversity on the landscape in terms  
2 of speciation and age-class and wildlife diversity.

3 Q. Now, I would like to take you back to  
4 the policy at page 308. You will see in the third  
5 paragraph::

6 "The district manager will determine the  
7 species for which population and/or  
8 habitat data will be collected."

9 Now, we have heard evidence about the  
10 varied technical background of district managers. Can  
11 you advise, in light of that, how is the district  
12 manager able to make that kind of decision?

13 A. In deference to Mr. Pyzer they  
14 aren't. They have available to them the professional  
15 expertise in their staff to recommend to them, if you  
16 will, those species that should be considered in any  
17 particular timber management planning exercise.

18 Oftentimes the district manager chairs a  
19 timber management planning team and he is drawing upon  
20 the expertise of professionals on his staff that are  
21 sitting on that team for direction.

22 Q. You indicated in your opening remarks  
23 that when you are collecting information for wildlife  
24 purposes you don't start from -- pardon me, when you  
25 are collecting information or determining whether you

1 need any information for timber management purposes  
2 that, as a wildlife biologist, you don't start from  
3 scratch, that you have got an existing database?

4 A. That's correct.

5 Q. And could you explain the type of  
6 data that you would normally have at the outset of a  
7 timber management planning process?

8 A. Again, there are a number of  
9 regularly occurring programs at the district level that  
10 enable us to collect information over the years  
11 concerning the district landscape.

12 This information is collected for  
13 wildlife management purposes directly, but it has a  
14 link to timber management planning in that it gives us  
15 knowledge about many areas of the district that may not  
16 even be accessible. It gives us a knowledge, at least  
17 superficially, of what kind of wildlife population  
18 levels to expect in any given location.

19 Q. Could you indicate for the Board what  
20 the relationship is between the kind of information  
21 regularly collected for wildlife management purposes in  
22 timber management planning?

23 A. Probably the best way to do that  
24 would be through the use of an example. And one of our  
25 regularly collected information basis, if you will, is



1 information on moose population densities and that  
2 problem can best be explained through the use of some,  
3 again, visual aids, if I might be permitted.

4 Q. Yes. You really don't have to ask  
5 me, Mr. McNicol. I think there has been -- certain  
6 witnesses have demonstrated that I don't have very much  
7 control over witnesses at some times.

8 MR. McNICOL: I don't believe that.  
9 Don't concerned about the scale of this  
10 particular map, it is not important that you be  
11 cognizant of all the information that is on here, but  
12 pay attention to the colour scheme.

13 This represents the first step in how we  
14 would mount an aerial survey for moose and what's  
15 involved is stratification of a particular wildlife  
16 management unit into high, medium and low moose  
17 densities.

18 This information, or the information  
19 required to determine where our high, medium and low  
20 moose densities are is a function of historical  
21 information from previous aerial surveys and also  
22 information collected on the vegetative characteristics  
23 of each one of the merkator grid blocks.

24 A merkator grid block is simply a  
25 10-kilometre by 10-kilometre grid. It is a system that

1 is used universally to tie information to a specific  
2 geographic location.

3 As an example. If I indicated to  
4 somebody in Pakistan that I had a moose concentration  
5 area at grid block YD15 he, having a map of Ontario and  
6 being familiar with the UTM system or universal  
7 transverse merkator system, would instantly be able to  
8 recognize where that particular location was. So it is  
9 just a means by which -- it allows rapid geographic  
10 reference to a particular location. The wildlife data  
11 collection system is based on the merkator grid format.  
12 This 10 by 10-kilometre square.

13 In preparation for the stratification of  
14 this particular wildlife management unit, which is  
15 wildlife management unit 13 in which we are sitting  
16 right now, the characteristics of the vegetation on  
17 each potential aerial survey plot - and that is a 2.5  
18 by 10-kilometre plot, 25 square kilometres, 25 per cent  
19 of one merkator grid block - was characterized and it  
20 was roughly characterized to determine its potential to  
21 produce moose.

22 Overlaying that information, we have the  
23 historical aerial survey information to help confirm  
24 the initial stratification.

25 MR. MARTEL: Do you actually go out and

1 view that visually or is it from, let's say, the forest  
2 resource inventory or...

3 MR. McNICOL: It is from the forest  
4 resource inventory maps and also aerial photographs.

5 The colour scheme that you see here  
6 represents the finalization of that process, the  
7 stratification. The red areas that you see are the  
8 areas of high moose densities the green areas that you  
9 see here are the areas of medium moose density; and  
10 blue areas you see are the areas indicating low moose  
11 densities.

12 Now, although this exercise is carried  
13 out for the conducting of aerial moose population  
14 surveys, it has an obvious link to timber management  
15 planning exercises in that we have now a rough cut that  
16 allows us to identify those areas where we have  
17 concerns with regard to moose; our high areas, our  
18 medium areas. If these areas fall under a timber  
19 management plan, we have concern.

20 MR. FREIDIN: Perhaps that document  
21 could be marked as an exhibit.

22 Q. Mr. McNicol, is that a document which  
23 is used within the district on a regular basis?

24 MR. McNICOL: A. Very much so and --

25 Q. Did you want to take that back and we



1 can get another copy of that?

2 A. As it happens, this particular unit  
3 is not going to be flown this year. The one north of  
4 that 15B will, so this particular information is not  
5 required currently.

6 MR. FREIDIN: All right. Well then,  
7 perhaps we could just mark it as an exhibit and if it  
8 becomes necessary to use it or have access to it, I am  
9 sure we can arrange something.

10 THE CHAIRMAN: Exhibit 314. And that is  
11 a moose density survey of area 13; is that what it is?

12 MR. McNICOL: It represents  
13 Stratification of Wildlife Management Unit 13.  
14 ---EXHIBIT NO. 314: Stratification of Wildlife  
15 Management Unit 13.

16 MR. McNICOL: The map that I have before  
17 you here now is a map upon which we record the  
18 information from these individual aerial surveys that  
19 have taken place over time.

20 You will note that we are dealing with  
21 the same small rectangles, 2.5 by 10 that is a sub-set  
22 of a merkator grid block and on each one of these small  
23 rectangles there is indication of the number of moose  
24 that were seen on that particular plot in that  
25 particular year.

1           The colours designate different densities  
2 of moose. The high areas are in green, the blue areas  
3 are the medium density moose populations and the low is  
4 indicated by the orange colour.

5           There is an obvious link here as well with  
6 the timber management planning exercise. This  
7 information collected over time again helps us, one, to  
8 stratify; and two, to identify those areas given that  
9 an area is coming under forest management activity for  
10 which we should have concern.

11           MR. FREIDIN: Mark that as the next  
12 exhibit.

13           THE CHAIRMAN: Exhibit 315.

14           MR. FREIDIN: What are we going to call  
15 that one?

16           MR. SWENARCHUK: What are we calling 315?

17           MR. McNICOL: Record of aerial survey  
18 information.

19           ---EXHIBIT NO. 315: Record of aerial survey  
20 information.

21           MR. McNICOL: The Board has probably  
22 noted that the information previously presented gives  
23 information at a relatively gross level. As fine a  
24 point as we are able to draw on it is 25 square  
25 kilometres, that representing an aerial survey plot.

1                   This is an actual aerial survey plot here  
2                   and it is a map that is taken in the air with us when  
3                   we are doing the actual aerial surveys. These hatched  
4                   lines here represent the actual transects that were  
5                   flown on this plot to detect moose and you will note  
6                   that there are circled numbers on the transect lines.  
7                   These circled numbers represent groups of moose that  
8                   were seen while flying.

9                   The relevance of this information is that  
10                  when we are doing timber management planning we are  
11                  dealing at this scale, we are dealing at a  
12                  stand-by-stand scale. The ability to correlate this  
13                  information on specific moose groups to a specific  
14                  stand level is invaluable in terms of accurately  
15                  inputting into the timber management planning process.

16                 MR. FREIDIN: Q. We don't have a hard  
17                 copy of that at the moment, do we?

18                 MR. McNICOL: A. In terms of an exhibit,  
19                 no we don't. We can certainly make copies.

20                 MR. FREIDIN: Perhaps we could reserve an  
21                 exhibit number for that, Mr. Chairman. And what would  
22                 we call that, that last document?

23                 MR. McNICOL: This is an actual aerial  
24                 survey plot.

25                 THE CHAIRMAN: Exhibit 316.



1       ---EXHIBIT NO. 316: Aerial survey plot for moose.

2                   MR. FREIDIN: We'll make that aerial  
3 survey plot for moose?

4                   MR. McNICOL: For moose.

5                   This is information that flows from the  
6 plot map that you just saw. The plot you were looking  
7 at was 1316. These are the numbers, group numbers of  
8 moose seen and this details what those groups existed  
9 of.

10                   So, for instance, in group 3 we had a  
11 Class 1 antler bull, we had a Class 1 single antlered  
12 bull - remember these surveys are done during the  
13 winter and moose begin to lose their antlers in early  
14 December - a total of 2 moose and this was the makeup  
15 of that particular group.

16                   You might also note on the right-hand  
17 side of the tally form there is assessment made of the  
18 habitat type in which those moose groups were seen.  
19 Again, this helps us correlate this information to the  
20 FRI maps that are submitted for allocations in the  
21 timber management planning process.

22                   MR. FREIDIN: And perhaps that document  
23 can be marked as the next exhibit. That would be  
24 Aerial Moose Age and Sex Survey Observation Summary  
25 Form. That is the name of it.

1 MR. McNICOL: I was going to ask you if  
2 you had done this before.

3 THE CHAIRMAN: Exhibit 317.

4 ---EXHIBIT NO. 317: Aerial Moose Age and Sex Survey  
5 Observation Summary Form.

6 MR. FREIDIN: Is that particular one in  
7 the witness statement?

8 THE CHAIRMAN: You better -- can you flip  
9 that on for a second. I just got to sex survey...

10 MR. McNICOL: I am sorry, sex survey, eh.  
11 It is Aerial Moose Age and Sex Survey Observation  
12 Summary Form.

13 THE CHAIRMAN: Thank you.

14 MR. FREIDIN: Q. Now, Mr. McNicol, that  
15 information that you have just described through the  
16 use of those exhibits, as I understand it, that is the  
17 type of information which is regularly collected as  
18 part of the wildlife program.

19 MR. McNICOL: A. That's correct.

20 Q. Is there any information which is  
21 regularly collected which deals specifically -- which  
22 also provides information about wildlife habitat?

23 A. Yes, there is. It is called the  
24 Habitat Inventory Program, a relatively new program in  
25 our Ministry but, yes.

1 Q. Could you describe that process?

2 A. I shall. At the risk of boring the  
3 Board I will sit down at this time and talk to it.

4 The information that has been already  
5 explained that is available is one piece of regularly  
6 collected information that comes to bear.

7 In terms of getting specific areas of  
8 concern with regard to moose in this example, we have  
9 this regularly collected information for aerial  
10 surveys. We have some other information that we will  
11 speak to briefly after this, but I think the point to  
12 be made here is that in any given area of operation we  
13 have some information but there are holes, you can see  
14 that we have not flown every square kilometre of the  
15 district, even historically.

16 Where those holes exist it is necessary  
17 to collect information to allow us to accurately  
18 identify those areas of concern vis-a-vis timber  
19 management.

20 A first cut at that exercise involves  
21 looking at the FRI in the area of the undertaking and  
22 looking at stands that have been allocated within that  
23 area of the undertaking and determining where the best  
24 potential for moose exists on those sites. And there  
25 are some parameters that I will deal with just a little



1 bit later that we look for to help us identify where  
2 those sites are, those sites that have the potential to  
3 hold moose populations.

4 After we have made that cut, we then look  
5 at these areas having had them identified first on the  
6 maps from the air to determine whether that potential  
7 has been fulfilled on the ground in terms of moose.

8 These surveys, as are the aerial  
9 population surveys, are conducted during the winter. A  
10 reason that they are conducted during winter - and I  
11 didn't mention it before - is that moose are damn hard  
12 to see at any other time. They are a dark animal in a  
13 dark environment and without that white backdrop they  
14 are very difficult to observe.

15 The snow also presents a slate, if you  
16 will, that even in their absence indicates use of a  
17 particular habitat; tracks will stay for many weeks if  
18 we don't get large dumps of snow and are indicative of  
19 use of these types of habitats over time over the  
20 winter period. That is the winter part of the habitat  
21 inventory.

22 We also do a summer aquatic inventory  
23 where we are looking at water courses. We are looking  
24 at water courses to identify aquatic feeding sites for  
25 moose, we are also looking at these particular areas as

1 potential breeding and staging areas for water fowl,  
2 and we are also looking to pick up any information we  
3 can concerning the existence of eagle, heron, osprey,  
4 those particular species that exist close to water or  
5 flying these water courses and we can pick up  
6 information concerning those species.

7 We also, at the same time - since we are  
8 flying these water courses - work to document the  
9 existence of nesting sites, critical habitat for these  
10 same species when we have got information from  
11 observations from the public, from our field people,  
12 from tourist operators, trappers, whatever the source  
13 of birds in that particular location.

14 No nest sites have been identified, but  
15 if we know that we have prior knowledge of the  
16 existence of the species been reported to us in the  
17 past, we will look then for nesting sites in the  
18 vicinity of that lake where the observations have been  
19 recorded to determine whether there is critical habitat  
20 there that has to be dealt with in the timber  
21 management planning process.

22 So again this is regularly collected  
23 information that is done specifically for accurate  
24 input into the timber management planning process.

25 Q. Now, there is reference in your

1 material, I think page 225, in relation to wildlife  
2 harvest data. Is that sort of information information  
3 which is collected on a regular basis?

4 A. It is.

5 Q. And is that information used in any  
6 way for input into timber management plans?

7 A. It is and, again, I guess I can best  
8 demonstrate with the information that we have at hand.

9 Q. All right.

10 A. We have a system for recording  
11 information concerning the kill of big game species;  
12 deer, moose, bear. The keystone of that system is the  
13 big game harvest card which is a standard form that is  
14 used provincially.

15 The big game harvest card has, in part of  
16 its database, a merkator grid block location, location  
17 of kill. The information concerning, say, a moose kill  
18 by a specific hunter can be recorded at a district  
19 office. We have a jaw exchange program where we  
20 collect jaws for accurate aging of animals when taking  
21 the harvest.

22 When an individual brings in a jaw at a  
23 check station or a district office the location of that  
24 kill be it moose, deer, bear is recorded on the big  
25 game harvest card.



1                   Again, this information collected over  
2                   time and displayed in this type of format gives a quick  
3                   visual picture of where your hot spots are, if you  
4                   will, in terms of, in this case, moose kill. The red  
5                   dots appropriately are the high kill areas, indicating  
6                   kills greater than or equal to six animals in a given  
7                   year; the green areas medium kill density 3 to 5; blue  
8                   low, 0 to 2.

9                   This gives a quick visual snapshot. If,  
10                  for instance, timber activity was to take place in this  
11                  particular area in the area of merkator grid block  
12                  XD96, just looking at kill information here we know  
13                  intuitively that we have got good habitat because we  
14                  have got a lot of moose that are being shot there and  
15                  they are not there by accident, they are there because  
16                  their life requirements are being met on this  
17                  particular land base.

18                 Q.   Except the ones that are shot?

19                 A.   Except those. So again it is just  
20                  another source of information that we regularly collect  
21                  that help us to key in on areas that are of concern,  
22                  not only for moose, but for other big game species as  
23                  well.

24                 THE CHAIRMAN: Can we mark that then as  
25                  Exhibit 318. I understand Mr. Martel was concerned

1 that might be a picture of the next house of Commons.

2 ---EXHIBIT NO. 318: Moose kill summary map.

3 MR. MARTEL: Things have changed  
4 dramatically in the last two weeks.

5 MS. SWENARCHUK: What is the name of  
6 that?

7 THE CHAIRMAN: What title are we going to  
8 call that?

9 MR. McNICOL: Moose kill summary map.

10 MS. SWENARCHUK: Moose kill celebration?

11 MR. FREIDIN: Summary map.

12 MR. MARTEL: Can I ask a couple of  
13 questions on moose kill.

14 MR. McNICOL: Please.

15 MR. MARTEL: The railroad, I never  
16 brought a Tropic here, but at one time did you not  
17 collect information from the railroad on the number of  
18 moose that were killed?

19 MR. McNICOL: I know in some districts  
20 they do that regularly as a matter of course. We do  
21 not, in Thunder Bay District, and that is another  
22 excellent source of information that gives us good  
23 trend over time about moose populations in a given  
24 area.

25 MR. MARTEL: Have you been able to

1 convince the railroad to move from the type of horn  
2 that they use which in fact attracts moose to something  
3 that would, in fact, prevent that from occurring?

4 I raise that because of the number of  
5 railroader who raised that matter with me within the  
6 last three weeks. One railroader told me he killed two  
7 this year and five last year and he is worried. I  
8 mean, one of these days a train is going to leave the  
9 track.

10 And I was just wondering if you have you  
11 been able to convince the railroad to move, as we have  
12 in trucking, to some other form of device?

13 MR. McNICOL: We are talking to them  
14 about cow catchers.

15 MR. MARTEL: No, I mean--

16 MR. McNICOL: I am just...

17 MR. MARTEL: --some distinct noise. I am  
18 an old railroader, so cow catchers don't appeal to me,  
19 a noise which in fact scares them off as opposed to  
20 brings them out and causes them to take the train on.

21 MR. McNICOL: I understand and I was  
22 being facetious in my comment about cow catchers.

23 No, we haven't not at this particular  
24 time of year, but certainly when these animals are in  
25 rut, it is a big problem. I don't know that it much



1 matters what kind of horn they use at that time of year  
2 they are vulnerable to any kind of attraction.

3 Now, you would have to look at it I guess  
4 from the railroad standpoint in that it is going to be  
5 relatively costly to refit all these diesels with a  
6 horn -- no.

7 MR. MARTEL: One accident will cost the  
8 railroad \$10-million.

9 MR. McNICOL: Well, okay. You have to  
10 keep things in perspective.

11 MR. MARTEL: Yes.

12 MR. McNICOL: That is an interesting  
13 point and I hadn't really had it brought to my  
14 attention, vis-a-vis the horn, as being a problem of  
15 possibly attracting these animals.

16 MR. FREIDIN: Q. Now, moving away from  
17 the big game for a moment, Mr. McNicol, at page 226  
18 there is reference to registered traplines and we will  
19 find a document page 306 which actually is a document  
20 which depicts registered trapline boundaries in the  
21 Thunder Bay District.

22 And could you advise whether any  
23 information is regularly collected in relation to those  
24 areas which has importance for timber management  
25 planning purposes?

1                   MR. McNICOL: A. Yes. I think the  
2 important point is first to look at page 306 which, as  
3 Mr. Freidin has indicated, indicates the registered  
4 trapline boundaries in Thunder Bay District.

5                   If you turn then to 307, this is where  
6 the information is displayed, this is a sample of a  
7 printout that we receive indicating, for each one of  
8 those registered traplines in any given year, the fur  
9 that has come off those traplines taken by the  
10 registered trapper to whom that line belongs.

11                  The importance of this information with  
12 regard to timber management planning is that it  
13 subdivides the district into smaller pieces for which  
14 we have specific harvest information and specifically  
15 fur harvest information.

16                  This information can be very useful in  
17 terms of inputting into the timber management plan  
18 when, as a matter of course, we invite trappers, as  
19 stakeholders, to public information sessions or  
20 presentation of draft plans, information sessions.

21                  A trapper coming to us that has been  
22 invited to such a session can indicate that on his  
23 particular trapline, which happens to fall within the  
24 area of the undertaking - and that's the reason he has  
25 been invited - he has taken a large amount of fur over

1 the years, and we have the records to show that.

2 What we need from him is information  
3 concerning where his trapline actually exists in the  
4 context of his whole registered line. He can tell us  
5 in detail where he is taking specific types of fur from  
6 that line. That information can then be used to modify  
7 any operations that may be occurring in those  
8 particular locations that may adversely impact on his  
9 livelihood.

10 THE CHAIRMAN: Mr. McNicol, are these  
11 figures in this example typical?

12 MR. McNICOL: I'm sorry?

13 THE CHAIRMAN: Are the numbers in this  
14 example on page 307 typical?

15 MR. McNICOL: Are they typical?

16 THE CHAIRMAN: Of the numbers that a  
17 trapper would take off from his trapline?

18 MR. McNICOL: Yes.

19 THE CHAIRMAN: They do not seem to be  
20 very large. They do not seem to cover a lot of  
21 different species.

22 MR. McNICOL: Okay.

23 THE CHAIRMAN: Would the trapper have  
24 many more than one trapline?

25 MR. McNICOL: No, no. It is unusual --



1 it would be very unusual for a trapper to have more  
2 than one trapline.

3 THE CHAIRMAN: Or are these taken solely  
4 for food or...

5 MR. McNICOL: No, no. They are taken  
6 primarily for fur. Perhaps it would aid if I led you  
7 across one of the rows.

8 We could start at the top, Mr. Lukula.  
9 If we look at the extreme left, it is his trapline No.  
10 TB02N10301. You will note above his trapline number  
11 the beaver quota. His beaver quota is 20.

12 Are you with me?

13 THE CHAIRMAN: Yes.

14 MR. McNICOL: Okay. If you look to the  
15 right of beaver quota you see beaver. This is the  
16 number of beaver that this particular individual took  
17 in that given year and it is 15; the number of mink,  
18 20; number of martin, 36; and then so on across the  
19 line.

20 You can see, as you have indicated, when  
21 you get to some of these other species there are  
22 relatively few have been taken.

23 THE CHAIRMAN: I guess frankly when I was  
24 looking at it I was not looking at the figures under  
25 all of the writing. I guess I started with otter.

1 MR. McNICOL: Oh, I see.

2 THE CHAIRMAN: As you go across and it  
3 did not seem like very many animals.

4 MR. McNICOL: When you look at what you  
5 would refer in the trapping trade I guess as the bread  
6 and butter fur you are looking at beaver, martin, mink  
7 and certainly most traplines show more of that fur  
8 taken than the others.

9 MR. FREIDIN: Q. The people that are on  
10 this list, would most of the people on this list be  
11 people who would be trappers as sort of a means of  
12 livelihood, or would they be people who would do it  
13 sort of on some other basis?

14 MR. McNICOL: A. More and more we are  
15 seeing, if you will, hobby trappers. These would be  
16 individuals that have two jobs in essence; they have a  
17 regular job plus they trap.

18 So the fur that is taken here, while it  
19 would be a portion of their livelihood, certainly would  
20 not be all of it.

21 Q. When you said that, are you referring  
22 to the numbers -- the kinds of numbers you see here  
23 would not be someone who was doing trapping as a sort  
24 of full-time occupation?

25 A. Correct.

1                   Q. All right. Now, Mr. McNicol, when  
2                   you get a call in your office or somebody notifies you  
3                   that you are going to be involved in a timber  
4                   management planning exercise, can you indicate what you  
5                   do and what sort of action do you take?

6                   A. The first step in the process is that  
7                   we bring the information that we have spoken of,  
8                   exclusive of the habitat inventory - because that is  
9                   something that follows in the process - but as a first  
10                  cut, to try to determine where our areas of concern are  
11                  from a wildlife perspective, we would bring much of the  
12                  information that we have spoken to here to bear to  
13                  identify, at least on a preliminary basis, those areas  
14                  that are supporting good numbers of moose.

15                 And because of the relationship between  
16                 moose and other generalist species - those that require  
17                 diversity of habitats to exist - by extrapolation of  
18                 other wildlife species on those sites and try to define  
19                 them as a rough cut area of concern, values map. Mr.  
20                 Kennedy spoke to a values map. That is what I am  
21                 speaking of. That would be the first step in the  
22                 process.

23                 Then to refine that information or to  
24                 augment that information, habitat inventory would be  
25                 undertaken to fill in the gaps, if you will, for



1 information on that area that is proposed for  
2 harvesting.

3 Q. I understand that as a result of that  
4 process that you in fact prepare -- there are certain  
5 maps which represent the presence or spottings of some  
6 of those rare species that you referred to such as  
7 eagle, osprey and herons?

8 A. Yes, and I have an example of that  
9 map. This is Thunder Bay District's map where we  
10 record information concerning nest locations for bald  
11 eagle, osprey, great blue heron, cormorant.

12 This is a cumulative record and it is  
13 updated, not certainly annually. We can't get to all  
14 of these sites annually, we would try to get to them at  
15 least every three years, to determine whether these  
16 sites are still active and, if they are active, what  
17 kind of young have been produced in that year; in other  
18 words, is this a productive site or no.

19 These nesting sites are somewhat  
20 afemoral, they change over time. It is not uncommon  
21 for a bald eagle, for instance, to have two or three  
22 nesting sites that they will use on a periodic basis  
23 over the years around a particular water body or a  
24 couple of approximate water bodies.

25 So it is necessary to update this

1 information vis-a-vis the timber management planning  
2 process because where we have an eagle's nest this year  
3 it may be in another area - not far away - but in  
4 another area two or three years from now,

5 In addition, because of the great bulk of  
6 some of these nests and some of them can weigh up to  
7 800 pounds after they are constructed - and this  
8 applies not only to bald eagle but to osprey and herons  
9 as well - the trees will collapse with the weight, the  
10 tops will break off. So oftentimes they have to renest  
11 of necessity because the original nest site is lost.

12 So this information again is collected on  
13 a site-specific basis. Those of you that are close  
14 enough may see that each one of those sites are  
15 numbered. The specifics concerning this particular  
16 nest site in terms of when it was first seen, a map  
17 showing its exact location - because you can't tell  
18 that from this scale of map - and any recent  
19 information with regard to surveys as to when it was  
20 last reported active, how many young it had, that kind  
21 of information, is kept in what we call a sensitive  
22 areas report book that is updated solely for the  
23 purpose of looking at these types of sites.

24 MR. FREIDIN: Mr. Chairman could that be  
25 marked as the next exhibit?

1 Q. Mr. McNicol, what about that  
2 particular document; is that one of a kind that we  
3 would prefer reside in the district office?

4 MR. McNICOL: A. Yes, this one we do  
5 refer to regularly.

6 MR. FREIDIN: Well, can we mark that as  
7 an exhibit and perhaps if anyone wants to take a look  
8 at it today, but obviously it would be available in the  
9 district office.

10 THE CHAIRMAN: All right. Exhibit 319.  
11 ---EXHIBIT NO. 319: Sensitive areas map, Thunder Bay  
12 District.

13 MR. FREIDIN: Perhaps you can ensure, Mr.  
14 McNicol, that the people in the office understand that  
15 it has been marked and I know that it wouldn't go  
16 missing, but now there is an added reason that we don't  
17 want it to go missing.

18 Mr. Chairman, if you were going to have  
19 an noon break, I think this is an appropriate time.

20 THE CHAIRMAN: Okay.

21 MS. SWENARCHUK: Was that exhibit 319?

22 THE CHAIRMAN: 319, that's correct.

23 MS. SWENARCHUK: And the name of it?

24 THE CHAIRMAN: Sensitive areas map,  
25 Thunder Bay District.



1 We will break for 15 minutes.

2 MR. FREIDIN: All right.

3 ---Recess taken at 2:35 p.m.

4 ---Upon resuming at 2:50 p.m.

5 THE CHAIRMAN: Be seated, please.

6 MR. FREIDIN: Q. Mr. McNicol, I  
7 understand that you have a series of slides which will  
8 demonstrate some of the habitat features that you have  
9 spoken about and some other matters of importance in  
10 relation to the relationship between timber management  
11 and wildlife management?

12 MR. McNICOL: A. To make this a truly  
13 multi-media event this is one format I haven't used  
14 yet, so yes, I do.

15 Q. Okay, can you just use that. I don't  
16 know whether we need to dim the lights or not. Are  
17 some of these slides in the witness statement, Mr.  
18 McNicol?

19 A. They are.

20 THE CHAIRMAN: Can everybody see that?

21 MR. CAMPBELL: Yes.

22 MR. FREIDIN: Some of the photographs  
23 that will be shown, Mr. Chairman, are reproduced in  
24 black and white, not that clearly, starting on page  
25 236.

1 MR. McNICOL: It is sometimes difficult  
2 to explain in words what we are trying to look for in  
3 terms of vegetative characteristics that will support a  
4 wide variety of wildlife species including moose.

5 This is particularly pertinent when we  
6 were talking about habitat inventory and the necessity  
7 to key on areas that have a vegetative as well as  
8 age-class diversity.

9 You can see here a young successional  
10 mixed forest in the background where the three moose  
11 are located. In the foreground you can see some mature  
12 conifer or semi-mature conifer. This is the type of  
13 diversity in terms of speciation and age-class that  
14 moose and a number of other generalist species key on.

15 For herbivores like moose, hare, other  
16 small mammals the vegetation that is available in the  
17 understorey here in terms of herbaceous vegetation,  
18 ground plants, the woody shrubs and small tree  
19 species - the brush, if you will - all of this  
20 vegetative matter is an important base upon which  
21 herbivores exist.

22 Where herbivores exist the predators of  
23 herbivores exist and in consequent numbers, if you  
24 will. The higher the number of small mammals, large  
25 mammals that are herbivores on these particular sites,

1 the higher the number of predators.

2 So this kind of diversity does provide  
3 habitat for a wide range of wildlife species and it is  
4 these types of areas that we key on in terms of  
5 identifying those potential habitats will support  
6 wildlife and, therefore, are an area of concern in the  
7 timber management planning process.

8 Just another example of some age-class  
9 diversity.

10 MR. FREIDIN: Perhaps, Mr. Chairman, just  
11 for the record we can just indicate the first photo  
12 that he referred to is in fact photo No. 1 on page 236.

13 THE CHAIRMAN: Are these going in order.

14 MR. FREIDIN: I am not too sure.

15 MR. McNICOL: Roughly, not exactly.

16 MR. FREIDIN: Q. So the second one which  
17 he has now just put up is photograph No. 2 on page 236.

18 MR. McNICOL: A. Another concept that we  
19 can speak to in this picture is a concept of edge and  
20 simply edge is where two different types, either of  
21 age-class or vegetation types come together and it is  
22 at that juxtaposition where benefits accrue to a number  
23 of different wildlife species that would exist either  
24 here or here.

25 Here is the edge between those two types



1 and that edge then becomes ideal habitat for not only  
2 species that would exist in the foreground but for  
3 species that would exist in the background as well.

4 A basic rule large amounts of edge means  
5 good numbers of wildlife because it creates the type of  
6 particular niches, if you will, or small habitat  
7 components that are utilized by a number of species.

8 These are the type of sites -- I am  
9 sorry.

10 Q. The slide that is now up is slide No.  
11 4 on page 237.

12 A. These are the type of sites that we  
13 would be identifying in our summer aquatic inventory  
14 programs. These are sites that support aquatic  
15 vegetation or are utilized heavily by moose and a  
16 number of other wildlife species for the aquatic  
17 vegetation.

18 And that aquatic vegetation, as Mr. Ward  
19 has indicated, can be either submergent or emergent  
20 vegetation, but basically they are water plants, they  
21 grow in water, shallow water.

22 Q. Photograph No. 3 on page 237.

23 A. Here we see aquatic vegetation  
24 growing along this particular lakeshore. As Mr. Ward  
25 indicated, this is the type of information that would

1 be collected as a matter of course in lake surveys. So  
2 it is another source of information that can be brought  
3 to bear for a wildlife purpose. A marsh area.

4 Q. That is photograph No. 7 on page 239.

5 A. With emergent vegetation. This type  
6 of habitat very important for water fowl species, both  
7 for breeding and for staging and, again, this kind of  
8 information is collected as a matter of course on the  
9 summer aquatic inventory program.

10 This is a typical nesting site for great  
11 blue heron.

12 Q. And that's document or photograph No.  
13 5 on page 238. Sorry to interrupt, Mr. McNicol.

14 A. No, no problem. Most often they are  
15 nesting in hardwood trees, sometimes in conifer but  
16 mostly in hardwood because of the open nature of the  
17 branching which supports these large nest structures.

18 Oftentimes these trees are dead after a  
19 period of time because of the buildup of excrement at  
20 the base of them and it necessitates these colonies  
21 having to move.

22 But this kind of information, again, can  
23 be confirmed in the case of reported sightings, but no  
24 definite nest site location being confirmed. When we  
25 have sightings in an area that is proposed for timber

1 management, we would go to that water body and look  
2 specifically for these nest sites.

3 Q. This is photograph No. 6 on page 239.

4 A: This is an osprey nest. Again, they  
5 are looking for the same types of nesting habitat.  
6 They like to be, more than herons, they like to be up  
7 high if possible at least at the canopy level or above,  
8 but they oftentimes are nesting in hardwood trees again  
9 or in coniferous trees that have got the tops broken  
10 off.

11 Again, it is relatively easy during the  
12 summer if there is a nest site or suspected nest site  
13 on a particular water body to pick these things up for  
14 that very reason, especially osprey, they tend to be  
15 nesting in the upper part of the canopy so it is  
16 relative easy to see the locations.

17 That completes that.

18 Q. Mr. McNicol, you gave evidence about  
19 vegetative mosaic and you indicated that that sort of a  
20 situation was a benefit to moose and many other  
21 species.

22 Could you comment about the species that  
23 were not included; in other words, what about the ones  
24 that you can't say that they benefit as a result of  
25 that vegetative mosaic?



1                   A. There are certainly some species that  
2 do not benefit from disturbance and the vegetative  
3 mosaic that results from a timber harvesting operation.  
4 Those species are relatively few.

5                   An example might be the pine martin which  
6 prefers, for the most part, mature coniferous climax  
7 forest but I don't want to dwell at any great length  
8 with this.

9                   Dr. Eiler in Panel 10 will be dealing  
10 specifically with effects of timber harvesting  
11 practices on a wide range of species and it is probably  
12 more properly dealt with at that time.

13                  But just the point has to be made that  
14 no, you know, we are not with this featured species  
15 approach accounting for habitat requirements of all  
16 wildlife species. We are accounting for habitat  
17 requirements of a great many.

18                  Q. Thank you. Now, in your evidence as  
19 well you indicated that information is not available on  
20 all species for any particular area, and I sort of put  
21 a hypothetical to you and asked what you would say to  
22 someone who came into the office and said: If you  
23 don't have that specific information on all the  
24 species, you know, you may lose certain species, there  
25 will be these detrimental effects.

1                   The response that you gave was in  
2 relation to the boreal forest and I am wondering  
3 whether you could sort of comment on the same  
4 hypothetical situation but where it arises out of a  
5 concern but in the Great Lakes/St. Lawrence forest  
6 region?

7                   A. The situation in the  
8 Great Lakes/St. Lawrence forest is quite a bit  
9 different than in the boreal forest. That particular  
10 forest type does not lend itself to monocultures, large  
11 expanses of single species stands; it is more mixed  
12 wood, a lot of coniferous and deciduous species mixed  
13 together.

14                   In terms of disturbance history, that  
15 particular forest, because of that type of makeup where  
16 you do have a relatively large deciduous component in  
17 the forest, it is not as conducive, if you will, to  
18 large-scale disturbance such as what exists in the  
19 boreal forest with wild fire. The disturbance that  
20 occurs there is much smaller, if you will, in scale.

21                   When trees mature in the Great Lakes/St.  
22 Lawrence forest, oftentimes what will happen is they  
23 become superdominant in the upper canopy and with age  
24 and deterioration fall down. As it happens, the type  
25 of harvesting that occurs in the Great Lakes/St.

1 Lawrence, in many respects, replicates what happens in  
2 nature in that harvesting in the Great Lakes/St.  
3 Lawrence forest type is quite selective in nature.

4 A lot of the harvesting that occurs there  
5 is for lumber species. So they are looking for large  
6 trees and they are cutting in a selective manner. So  
7 it is an example of how, in this particular situation,  
8 what occurs in terms of man's disturbance replicates,  
9 to a certain extent, what occurs in nature.

10 Q. Mr. Pyzer, I would just like to have  
11 you turn to the wildlife information policy on page 308  
12 for a moment and notwithstanding Mr. McNicol's comment  
13 about your qualifications to deal with these sorts of  
14 decisions, which I won't make another comment about,  
15 the last sentence says:

16 "The district manager will determine the  
17 species for which population and/or  
18 habitat will be collected."

19 Can you tell me, Mr. Pyzer, whether you as  
20 the district manager would take into account public  
21 input in coming to a determination on the subject  
22 matter referred to?

23 MR. PYZER: A. Oh, absolutely. In fact  
24 that's a point I almost interrupted when Mr. Ward was  
25 also presenting his evidence.



1 I think Mr. Ward, in terms of fisheries,  
2 talked about lakes smaller than 10 hectares and said  
3 that - I think it was 10 hectares - but the largest he  
4 had seen walleye was about 35 or thereabouts. In fact  
5 if one were to come in the office and say they know of  
6 a lake where we have walleye that is 8 hectares in  
7 size, there would be no question in my mind, but if we  
8 were doing a forest management plan that would be an  
9 area we would look to do a lake survey on regardless of  
10 the fact that our policy or direction may say we stop  
11 at 10.

12 If a good piece of information comes  
13 forward, we would act on that good information. In  
14 terms of the wildlife side, and I can think of an  
15 excellent case in point, the Aulneau Peninsula on Lake  
16 of the Woods, a very large area in the middle of Lake  
17 of the Woods, extremely large, in fact it is Wildlife  
18 Management Unit 7B.

19 The Ontario Federation of Anglers &  
20 Hunters and ourselves have both become quite excited  
21 about the fact that elk used to occupy that portion of  
22 Ontario and I would say principally on the direction of  
23 the Ontario Federation of Anglers & Hunters both at the  
24 zone level and the provincial level, we are starting a  
25 wildlife management plan and we will be doing very

1 extensive surveys and inventories with a view to  
2 reintroducing elk into Ontario, not unlike wild turkey  
3 in southern Ontario.

4 So absolutely, if a good piece of public  
5 information comes forward or a request, we would act on  
6 it.

7 MR. FREIDIN: Try to do a little bit of  
8 housekeeping before I get into the next area, Mr.  
9 Chairman.

10 Q. On page 244 of the witness statement  
11 there is reference to the term moose range. You will  
12 find that on page 244 in the first full paragraph which  
13 indicates that:

14 "Inventories are conducted annually with  
15 the aim of sampling each of the  
16 wildlife management units in moose range  
17 at least every third year."

18 Could you advise what moose range means?

19 MR. McNICOL: A. Moose range used in  
20 this context indicates areas in the province where  
21 moose commonly exist. Now, it could be used in another  
22 context if the words were rearranged a bit.

23 The range of moose, and in that context  
24 it may be referring to home range size or the area  
25 normally occupied by a particular moose in the pursuit

1 of his life requirements.

2 Q. All right. Is there a figure that is  
3 accepted as a general range of moose?

4 A. There are a number of figures that  
5 are bandied about but, generally, the numbers that we  
6 deal with are, anywhere from 15 to 60 square  
7 kilometres, depending on individual animals and  
8 depending on sex; the home range of bulls, for  
9 instance, on average larger than the home range of  
10 cows.

11 Q. All right. Now, having defined what  
12 the range of a moose is, can you then - and perhaps I  
13 am asking you to repeat yourself - but I always have  
14 some confusion with this, what then is moose range  
15 then?

16 A. Moose range is from Kenora to  
17 Algonquin, the area in which moose could commonly be  
18 expected to exist.

19 Q. So in the context on page 244, I take  
20 it it has the latter meaning?

21 A. Correct.

22 Q. Thank you. During the hearings, Mr.  
23 McNicol, there has been a substantial amount of  
24 questioning about boundaries for various types of  
25 resource management units overlapping.



1                   There has been discussion about different  
2 boundaries for forest management units, wildlife  
3 management units, district fisheries plans and that  
4 sort of thing. Are you aware of such overlaps as a  
5 result of your job?

6                   A. As it happens, the timber management  
7 planning process that I am involved in currently, the  
8 Bright Sands TMP, we are dealing with three districts,  
9 two regions, and two wildlife management units.

10                  Q. And can you advise me whether being  
11 involved in a situation with that type of overlapping  
12 of boundaries has any effect on your ability to  
13 effectively participate in the timber management  
14 planning process as a representative of the wildlife  
15 program?

16                  A. No, it doesn't. But what I might add  
17 is that it is not as simple a situation from an  
18 administrative standpoint to carry out my  
19 responsibilities as the wildlife representative on that  
20 timber management planning team because I have to  
21 correspond with the individuals that are responsible  
22 for wildlife management in other districts and, in  
23 essence, pull all that information together.

24                  The process is facilitated by the fact  
25 that irrespective of whether we are in Thunder Bay or

1 Nipigon or Ignace, we collect information the same. We  
2 have a uniform system for the way we collect  
3 information and that uniformity and the fact that it is  
4 site-specific information that is recorded on a  
5 merkator grid format allows us to bring that package  
6 together irrespective of what boundaries we are dealing  
7 with and bring it to bear only on the boundary that's  
8 of significance at that point in time and that is the  
9 boundary of the TMP.

10 Q. Thank you. Could you turn to the  
11 procedure in relation to wildlife information at page  
12 309. I direct your attention to the first bullet point  
13 that refers to the planning area?

14 A. I have it.

15 Q. Could you advise me what that refers  
16 to?

17 A. The planning area in this context is  
18 speaking to the allocation of timber over a five-year  
19 period that is a sub-set of all eligible stands that  
20 have been identified for a 20-year period in the timber  
21 management planning process.

22 Q. And when you say it's been allocated,  
23 it has been allocated for what?

24 A. Allocated for harvest in that first  
25 five-year period.

1 Q. All right. And does the term  
2 planning area have the same meaning, the last two lines  
3 on that page?

4 A. Yes, it does.

5 Q. If you go over to page 310 there is a  
6 term used in Item No. 3 which is referred to as areas  
7 eligible for harvest and I know we will be dealing with  
8 this in some detail in 15, but can you advise me what  
9 that means?

10 A. Again, a simple diagram I guess  
11 probably is the best way to describe it.

12 Q. All right.

13 A. As part of the timber management  
14 planning process, a company will show an area on their  
15 licence area that can be eligible for harvest over a  
16 20-year period.

17 Within the context of all of those stands  
18 they then select areas within there that they wish to  
19 consider for harvest in the first five years. So given  
20 that we have stands here that will be eligible for  
21 harvesting over a 20-year period, the planning area  
22 deals with a sub-set of all of those stands they would  
23 harvest in the first five years.

24 Q. In Item B.1 on page 310 there is  
25 reference to the stocking of certain stands, it's the



1 indented part. Can you advise whether the stocking  
2 which is referred to there is in relation to young  
3 stands or mature stands?

4 A. This would be stocking in relation to  
5 mature stands and this speaks to the photographs or  
6 slides that I displayed earlier. What you are looking  
7 for, in essence, in terms of early winter concentration  
8 areas are open canopied stands; i.e., purely stocked  
9 stands. So that's the reference.

10 Q. Okay. In reference to B.2 there is  
11 reference to calving sites and mineral licks. Can you  
12 advise why those particular matters are highlighted in  
13 the procedure document?

14 A. These are brought out in the Moose  
15 Habitat Management Guidelines as being key habitats for  
16 that particular species.

17 Q. If I might I would like to ask you a  
18 number of questions on the COSEWIC Endangered Species  
19 Act relations that you dealt with.

20 If you could refer back to Exhibit 308.  
21 Before I ask you some questions on that particular  
22 matter, I understand that some changes have been made  
23 to -- I am sorry, if I could just have one moment, Mr.  
24 Chairman - that you have prepared certain additional  
25 material which will form part of the report which

1 commences on page 331 of the witness statement?

2 A. That's correct.

3 Q. And is the document, the document  
4 entitled: Crown Land Timber Management and Rare,  
5 Threatened or Endangered Species in Ontario, a 1988  
6 update dated June, 1988?

7 A. It is.

8 MR. FREIDIN: I would like to mark that  
9 as the next exhibit, Mr. Chairman.

10 THE CHAIRMAN: Exhibit 320.

11 MR. FREIDIN: (handed)

12 THE CHAIRMAN: Thank you.

13 ---EXHIBIT NO. 320: Document entitled: Crown Land  
14 Timber Management and Rare,  
15 Threatened or Endangered Species  
in Ontario, a 1988 update dated  
June 10, 1988.

16 MR. FREIDIN: Q. Now, if you could turn  
17 to page 11 of Exhibit 308, please and you were  
18 referring to that page earlier in your evidence; that  
19 is the one that lists the difference between the  
20 COSEWIC and Ontario status designations as of October,  
21 1988.

22 I believe you indicated in your earlier  
23 evidence, Mr. McNicol, that only the Ontario  
24 designation has practical significance in Ontario. And  
25 could you indicate what is the practical effect of the

1 a species appearing on the Ontario list that is  
2 identified on page 11?

3 MR. McNICOL: A. The practical  
4 significance is that the policy that is detailed on  
5 page 308 comes into effect then.

6 Q. And in relation to the species that  
7 are threatened, do you have information contained in  
8 the witness statement which indicates how many  
9 threatened species exist within the area of the  
10 undertaking?

11 A. Yes, we have that information.

12 Q. Page 358 I believe.

13 A. Thank you. On page 358.

14 Q. And I believe that this particular  
15 page has some additions which would be found in the  
16 document Exhibit 320?

17 A. That's correct.

18 Q. All right. Could you indicate the  
19 page then on Exhibit 320 where we will find the  
20 additions, or is it contained all on one page?

21 A. No, it is not contained on one page.

22 Q. All right.

23 A. You have to skim through.

24 Q. I understand, if I can perhaps lead  
25 you a little bit, that if you are looking at page 358



1 of the witness statement, the two species that would  
2 have to be added to the threatened category are  
3 pitcher's thistle, which is a plant which is on page --  
4 is Table 1 of Exhibit 320, and that the other  
5 threatened species again is a plant species and it is  
6 ginseng, g-i-n-s-e-n-g, which is the fifth plant  
7 referred to on the same table?

8 A. That's correct.

9 Q. And could you advise -- by looking at  
10 page 358 of the witness statement and this Exhibit 320,  
11 can you advise whether any of those species are  
12 potentially negatively impacted from timber management  
13 activities?

14 A. You will note, looking at the  
15 right-hand column, that there has been an assessment  
16 made based on the habitat in which these species are  
17 normally found as to whether negative impact is  
18 unlikely, likely, or -- sorry, possible.

19 If you note those designations you will  
20 see that in the case of ginseng, negative impact is  
21 possible. For the rest of them negative impact is  
22 unlikely, which does not mean it is impossible, it just  
23 means that because of the habitat characteristics for  
24 those particular species exist, timber management  
25 activity is not likely to occur.

1 Q.. And in relation to the three original  
2 species on page 358, the impact is unlikely in relation  
3 to all three?

4 A. Correct.

5 Q. If I could ask you to advise what the  
6 document indicates in relation to endangered species  
7 identified under the Endangered Species Act?

8 A. Again there has been an assessment  
9 made of the added risk of timber management, vis-a-vis  
10 these particular species, and where they exist on the  
11 landscape. And I believe we now have, with the update,  
12 nine species that have been indicated as endangered and  
13 existing in the area of the undertaking of those nine  
14 five may experience a negative impact.

15 Q. And would you determine that by just  
16 examining each species as against the right-hand column  
17 of page 358?

18 A. That's correct, yes.

19 Q. Are there any additions to that  
20 particular list as a result of the information  
21 contained in Exhibit 320?

22 A. No.

23 Q. Thank you. Page 313 of the witness  
24 statement contains a report in relation to the non-game  
25 program of the Ministry of Natural Resources. Do you

1 have that, Mr. McNicol?

2 A. I do.

3 Q. Could you advise what the purpose was  
4 of including this document in your paper?

5 A. Maybe I can advise as to what it was  
6 not intended to do and it was not intended to indicate  
7 that the Ministry has a very expansive non-game  
8 program. I think we recognize that is not the case, as  
9 a matter of course.

10 However, having said that, if you page  
11 through the examples here that are given and what this  
12 is is a non-game program bulletin that was done by the  
13 non-game program co-ordinator Irene Bowman back in  
14 1984 -- sorry, 1985 and it was just a request from all  
15 districts as to what they are doing with regard to  
16 non-game at that particular point in time.

17 Recognizing that there is not a great  
18 deal of dollars being expended on the non-game program,  
19 it is remarkable really what is taking place across the  
20 province - and I might add that you will note there are  
21 inventories that have been done in here of non-game  
22 species that would be useful in terms of input into the  
23 timber management plan - I won't say there is a lot of  
24 them, but there certainly are some.

25 Q. There has been cross-examination



1 during the hearings that has suggested that the  
2 Ministry only manages game species and has little  
3 concern for small game species.

4 Can you respond to that suggestion?

5 A. I am sorry, could you repeat the  
6 question?

7 Q. Cross-examination to date from  
8 certain parties has suggested that the Ministry only  
9 manages game species and has no concern or little  
10 concern for small game species and I am just asking you  
11 if you could respond to that suggestion that has been  
12 made?

13 A. Perhaps you are meaning non-game  
14 species, you said... .

15 Q. I meant small non-game species,  
16 sorry.

17 A. Oh, okay. Again, this takes us back  
18 to the featured species approach and the fact that  
19 those species that we do manage habitat for, that  
20 habitat in its diversity is able to supply the habitat  
21 requirements of a number of other game species as well  
22 as non-game species because the requirements are the  
23 same.

24 Q. And is there any specific reason for  
25 focusing on the game species?

1           A. We do have a mandate to manage that  
2 resources that are of a social or economic benefit to  
3 the people of Ontario. Game species obviously does  
4 represent a direct economic benefit to the people of  
5 Ontario and that is part of our mandate.

6           The other aspect of that is that game  
7 species, unlike non-game species, have an added stress,  
8 if you will, in that these are actively hunted species.  
9 So there is another mortality factor besides the  
10 natural mortality factors which are the only things  
11 that non-game species have to worry about.

12           So there is a requirement that those game  
13 species be managed more carefully because there are  
14 other stresses that are applying to those species  
15 versus non-game species.

16           Q. Now, on page 383 we have the reports  
17 or the works or some of the works of Dr. Greer who was  
18 studying bald eagles in the Kenora District and that  
19 has been referred to earlier by Mr. Pyzer.

20           My only question for you in relation to  
21 that matter is: Again, why was that material included  
22 as part of the witness statement?

23           A. This is an example of a field study  
24 that was conducted in order to enable a status report  
25 on bald eagles. It is a continuing field study, we are

1 constantly, through Dr. Greer and the district staff in  
2 Kenora District, monitoring the health of that  
3 particular population.

4 It is possible in time - and certainly  
5 bald eagles are rebounding in terms of numbers - it is  
6 possible in time that we will be able to downgrade its  
7 status from endangered to a lesser classification based  
8 on Dr. Greer's work.

9 Q. Thank you. I would like to refer you  
10 to a few portions of the evidence given during Panel  
11 No. 6 and ask you to comment.

12 Mr. Kenrick was asked a question at page  
13 7664 of the transcript --

14 MS. SWENARCHUK: Excuse me, could I have  
15 that page number again..

16 MR. FREIDIN: Yes. It is hard to  
17 believe; isn't it? 7664.

18 Q. He was being questioned by Mr.  
19 Williams and was asked whether -- if a timber  
20 management operation takes place within the area of a  
21 trapline, the geographic area of a trapline would this  
22 not mean that the whole operation of necessity would  
23 have to shut down, or is it possible to operate on a  
24 half measure basis the trapline that is in the middle  
25 of a timber management operation?



1                   Now, Mr. Kenrick answered that -- well,  
2 perhaps I won't tell you what he answered. Could you  
3 answer that particular question?

4                   MR. McNICOL: A. Yes. Again a diagram I  
5 guess will help. Assume, if we can, that this is a  
6 registered trapline and that there is forest management  
7 activity that is proposed to occur on that trapline.

8                   In my experience and in my experience  
9 with talking to other wildlife biologists in the area  
10 of the undertaking we have not been able to document a  
11 case where an entire trapline has been under operation  
12 at any one point in time.

13                   Over time it is possible that and likely  
14 that a trapline will receive disturbance over most of  
15 its land base, but certainly at any given point in time  
16 it would be -- well, I don't know of a situation where  
17 it has been entirely affected in one year.

18                   So given that, what we have on a trapline  
19 would be where the trapper normally does his trapping,  
20 and his line -- assume that we have some access here.  
21 His trapline might run something like this and over  
22 that trapline he would have a number of water bodies  
23 and these would be creeks, a relatively large lake  
24 here. This would be where he would be taking the fur  
25 from his trapline.

1                   It would be very unusual to have a whole  
2                   trapline fully accessed. The trapline itself or the  
3                   route that a trapper takes over his trapline generally  
4                   is connected mostly to water systems. There will be  
5                   some overland travel, but he tries to stay as much as  
6                   he can to lakeshore environments; rivers, creeks that  
7                   kind of thing because his semi-aquatic fur and aquatic  
8                   fur are going to come from those sites. His land-based  
9                   fur, for instance, martin will be picked up in mature  
10                  conifer along these overland routes.

11                  So to get back to the point, if the  
12                  harvesting was proposed, say, in this particular  
13                  part...

14                  Q. Indicating sort of the southwest  
15                  part?

16                  A. The southwest portion, the trapper  
17                  No. 1 would be notified through the TMP process -  
18                  timber management planning process as he is a  
19                  stakeholder in this particular area of proposed  
20                  operation which is going out this way - he would be  
21                  notified, would come in, if concerned, and identify  
22                  where his particular concerns lay vis-a-vis the forest  
23                  management activity that was proposed in that portion  
24                  of his trapline and accommodation could be made to his  
25                  particular concern through the process.

1 MR. FREIDIN: Well, shall we mark that  
2 one too, Mr. Chairman?

3 THE CHAIRMAN: All right. Exhibit 321.  
4 ---EXHIBIT NO. 321: Diagram of trapline and cutting.

5 MR. FREIDIN: Q. What do we call it?

6 MR. McNICOL: A. Trapline and cutting.

7 Q. Okay. And assuming that north is  
8 straight up on that diagram, two questions. You said  
9 that harvesting would be going out this way, you  
10 indicated towards the direction that you are in.

11 A. Right.

12 Q. That would be west?

13 A. Correct.

14 Q. West of the area that you indicated  
15 in the southwest--

16 A. Correct.

17 Q. --portion of the trapline.

18 A. Yes, out here. (indicating)

19 Q. Yes. And you also indicated that it  
20 was not normal to have the area fully accessed.

21 What do you mean by that: Fully accessed  
22 by the timber, fully accessed by the trapper, what did  
23 you mean?

24 A. Fully accessed by the trapper.

25 Q. Thank you.



1           A. I might add that he may decide --  
2     given the harvesting activity that is occurring here  
3     and if he sees a net benefit in terms of what that  
4     diversity can do in terms of his fur take, he may  
5     decide to realign the line that he runs here to collect  
6     fur to incorporate some previously inaccessible area,  
7     make the effort, cut the trail, get on to the water  
8     system.

9           And he is going to lose, if we assume  
10    this is martin habitat down here, mature conifer -  
11    which is most likely going to be harvested - he is  
12    going to lose some martin habitat down here, he is  
13    going to gain some beaver habitat, if you will, some  
14    linx habitat. So he may decide to pick up the martin  
15    that he is going to lose here - if he decides that this  
16    is what he wants to do - he may decide that no, you  
17    know, I want to try to retain martin in this particular  
18    area, then we would try to accommodate that request.

19           But if he decides, no, he wants some  
20    diversity on the line, attract some different types of  
21    fur, then he may decide to realign his line to pick up  
22    martin in the northern portion and deal with other  
23    types of fur in this portion once it is revegetated to  
24    a point in a few years.

25           THE CHAIRMAN: Mr. McNicol, would you

1 rearrange the trap boundaries if he requested you to do  
2 so in order to compensate him for the loss of part of  
3 his trapping area?

4 MR. McNICOL: That would be extremely  
5 difficult because of the nature of the trapline  
6 boundaries.

7 If you remember the registered trapline  
8 boundary map, tight to this area is another registered  
9 trapline, so it would be extremely difficult to  
10 accommodate this particular individual at the expense  
11 of another.

12 THE CHAIRMAN: But is there any  
13 compensation offered in circumstances like that?

14 MR. McNICOL: We are providing access to  
15 his trapline. No, there is no direct compensation  
16 offered to the trapper in this given situation or in  
17 any situation that I am aware of.

18 THE CHAIRMAN: And his licence I guess  
19 states that to some extent? In other words, when you  
20 are given a licence for a certain area it may say that  
21 this is subject to timber activities taking place at  
22 the instance of the Ministry or the registered licensee  
23 or something like that?

24 MR. McNICOL: I can't speak to that. I  
25 don't know if it exists actually on the licence, but

1 certainly it is understood.

2 MR. MARTEL: I might have missed it, but  
3 did you say that you might modify the cut to  
4 accommodate him for that line?

5 MR. McNICOL: Oh yes, yes. And we have  
6 done that, I am speaking in Thunder Bay District.

7 THE CHAIRMAN: So in the hierarchy of  
8 things, trapping is a lesser interest, is that correct,  
9 to timber interests?

10 MR. McNICOL: Again, all things are  
11 relative and you have to measure the potential impact  
12 of cutting a portion of a trapline and the necessary  
13 benefits that will accrue to that trapper over time  
14 versus leaving this chunk of timber, if you will, to  
15 satisfy his requirements for martin habitat when he  
16 still has martin habitat to the north.

17 MRS. KOVEN: Isn't it a potential  
18 disadvantage, though, the distance to which animals  
19 would flee to get away from the harvesting activity?

20 I mean, the animals close by that aren't  
21 just going to stay there, are they? I mean, isn't  
22 there some boundary beyond which they won't approach an  
23 area that is being harvested?

24 MR. McNICOL: Are you talking about the  
25 disturbance of the actual harvesting practice?



1 MRS. KOVEN: Extend beyond the boundaries  
2 of where the trees are.

3 MR. McNICOL: Okay, yes. Generally  
4 wildlife, specially wildlife that has not been  
5 accustomed to man is not overly disturbed by the sound  
6 of machinery, for instance; they haven't developed a  
7 fear of man to that point in time because these are  
8 areas that previous to this point in time have been  
9 inaccessible.

10 So they are not overly concerned about  
11 that type of disturbance, most species; certainly not  
12 all. But in the case of martin, which has a relatively  
13 large home range, if you will, it's lost this chunk of  
14 habitat, those animals that utilized that particular  
15 portion of habitat to satisfy their life requirements  
16 could move into another area.

17 Now, having said that, martin are also  
18 territorial, so I can't be quite so facile in saying  
19 that these martin will just move over here because over  
20 here we already have martin existing.

21 So depending on whether there are any  
22 available opening habitats, if you will, or territories  
23 for martin in this particular location, these animals  
24 can move there, or here if there is available habitat.

25 MR. FREIDIN: Q. Mr. Pyzer, you look

1 like you want to add something.

2 MR. PYZER: A. Just a point of  
3 clarification. I think the question that was asked of  
4 John McNicol here was could he recall any instances  
5 where a trapline had been disturbed.

6 And I can actually think of traplines,  
7 entire traplines that, from one year to the next, on  
8 the second year there was not a single tree standing,  
9 that it was bald, solid bedrock the entire trapline and  
10 that was called Kenora 23 fire.

11 MR. FREIDIN: Mr. Chairman, we were going  
12 to break at four o'clock?

13 THE CHAIRMAN: Well, we have been advised  
14 that we can stay here forever because the all  
15 candidates meeting has been called off or something for  
16 this room.

17 However, having said that, I think we  
18 have had a relatively long day. I do not think we want  
19 to go much beyond 4:00 or 4:15 or...

20 MR. FREIDIN: Well, I just have a last  
21 series of questions. I don't think it will take us  
22 past 4:15.

23 Mr. Campbell has indicated he wanted 30  
24 second before we adjourn and I assume if we continue,  
25 you can wait until 4:15, Mr. Campbell?

1 MR. CAMPBELL: (nodding)

2 MR. FREIDIN: So I think that -- or just  
3 as soon finish with this witness.

4 THE CHAIRMAN: All right.

5 MR. FREIDIN: Q. Mr. McNicol, when did  
6 you first become involved in timber management  
7 planning?

8 MR. McNICOL: A. About 12 years ago.

9 Q. And your curriculum vitae does  
10 describe the type of involvement that you have had in  
11 timber management planning over those 12 years, but has  
12 it always been as a wildlife biologist?

13 A. It has not always been as a wildlife  
14 biologist -- I'm sorry. It has been as a wildlife  
15 biologist but not necessarily in the capacity that I am  
16 currently serving in that professional role.

17 I was, for a period of about six years, a  
18 regional habitat biologist. At that time I helped in  
19 development of some regional habitat management  
20 guidelines and also helped in the formulation of the  
21 Moose Habitat Management Guidelines.

22 Q. Over that 12 years has there been any  
23 change in the way information regarding wildlife  
24 management has been used or concerns of your program  
25 have been addressed during timber management planning?



1           A. In my relatively short experience I  
2 would suggest there have been dramatic changes in the  
3 way that other concerns, not just wildlife, are  
4 addressed through the timber management planning  
5 process and it really is remarkable the changes that I  
6 have seen in a relatively short period of time.

7           And the difference -- I guess the key  
8 differences are that other uses have been identified as  
9 legitimate other uses of the land base and that has  
10 been formalized, I guess to a certain extent, through  
11 the strategic land use planning exercise and as the  
12 offshoot of that, the district land use guidelines.

13           In the case of moose, for instance,  
14 before the district land use guidelines and before the  
15 strategic land use plan we did not have targets. These  
16 are numerical targets that we have to achieve by the  
17 year 2000 vis-a-vis moose. Those targets have helped  
18 us in terms of legitimizing, if you will, the  
19 institution of things like the Moose Habitat Management  
20 Guidelines, the Moose Habitat Policy, things to ensure  
21 that we can achieve those targets by the year 2000.

22           And, in the same sense, it has  
23 legitimized, if you will, the wildlife biologist as a  
24 legitimate player in the timber management planning  
25 game. He has an objective to fulfill just like the

1 forest management planner, unit forester, and that is  
2 recognized in the district context by the district  
3 manager.

4 So we have come a long way in terms of  
5 the way that we are able to realte to the timber  
6 management planning process and how our concerns are  
7 brought together through the timber management planning  
8 process.

9 Q. Can you advise whether there have  
10 been any changes in harvest methods over the years  
11 which have had an effect on the type of involvement  
12 that you have had in terms of attempting to achieve  
13 certain wildlife objectives through timber management  
14 plans?

15 A. I know the Board objects to going  
16 back too far, but I think it is important to get this  
17 thing in historical perspective. It has been a  
18 relatively short history in terms of logging in the  
19 boreal forest. It was not that many years ago, 50 or  
20 so, when we were dealing with horse logging in the  
21 boreal forest.

22 This was a time when species demand was  
23 relatively low and the quality of timber that these  
24 particular operators were looking for was very high by  
25 today's standards. The result of that was that the

1 cutting was relatively small scale and localized.

2 These small disturbances aided many wildlife species.

3 As time went on - and we are talking now  
4 about the early 60s - with the institution of  
5 mechanization into forest harvesting and an increase in  
6 fibre demand for other species other than high quality  
7 coniferous species, the cuts began to get larger, and  
8 the benefits were not always as great as they had been  
9 in the past.

10 In modern times we were looking at a much  
11 higher level of species demand, for instance birch and  
12 poplar than ever existed in the past. All range of  
13 coniferous species are merchantable. What I am trying  
14 to get at, I guess, is that the potential for large  
15 clear cuts and the potential for adverse impacts to  
16 wildlife species is much greater today than it was even  
17 15 years ago.

18 Given that, it has driven the habitat  
19 management guideline process where guidelines have been  
20 struck to ensure that where those values are identified  
21 field managers have a way of mitigating the impacts of  
22 forest management activities and that is a big  
23 difference to where we were just relatively a few short  
24 years ago.



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20 struck to ensure that where those values are identified  
21 field managers have a way of mitigating the impacts of  
22 forest management activities and that is a big  
23 difference to where we were just relatively a few short  
24 years ago.

25 Q. Do you have any concern in relation

1 to the manner in which the Guidelines for the Provision  
2 of Moose Habitat are being applied at the present time?

3 A. The guidelines are relatively new in  
4 their newest form, they have been around for some time  
5 in different drafts, but in the newest form they are  
6 relatively new and the mandate, if you will, the policy  
7 direction for their implementation is relatively new.

8 In some areas of the province there has  
9 not been a great deal of experience in terms of  
10 implementing the guidelines. And I will say this of  
11 the Moose Habitat Management Guidelines, it does take a  
12 certain amount of art as well as science to meld the  
13 objectives on the land base both for maintaining or  
14 enhancing moose habitat and not adversely and  
15 unnecessarily impacting forest management operations.

16 And that has happened to a certain extent  
17 with the newness of the guidelines and, if I might say,  
18 an unimaginative approach to their application and I  
19 think it can be corrected through some provincial  
20 guidance and workshops where we can share our  
21 experiences in terms of how we have implemented the  
22 guidelines, how successful we have achieved our  
23 objectives on the ground without adversely in all  
24 cases - and it will happen in some - but without  
25 unnecessarily adversely impacting our forest management

1 activity.

2 Q. Mr. Ward testified that he feels that  
3 as a result of having fisheries management plans now  
4 that that assisted him in being an effective member of  
5 a timber management planning team in terms of making  
6 sure that his program objectives were being addressed.

7 Are wildlife management units -- wildlife  
8 management units, is it common for them to have plans?

9 A. It is not common.

10 Q. Do you believe that the absence of  
11 those sorts of plans has a detrimental effect on your  
12 ability to be an effective participant on a timber  
13 management planning team in terms of having the values  
14 and objectives of your particular program dealt with in  
15 an acceptable manner?

16 A. No, not at all. I mentioned briefly  
17 the SLUP document and the fact that we have targets to  
18 achieve on a wildlife management unit basis for the  
19 year 2000. These are a population and harvest targets.

20 One of the important things in a plan is  
21 that you have an objective to achieve. Well, we have  
22 an objective, we have a target that we have to achieve.  
23 A plan can crystallize eyes means by which you are  
24 going to achieve that target.

25 In the case of moose management, we have



1 tools that we are utilizing now to achieve those  
2 targets. Those tools include a control over the  
3 harvest of moose and a very precise control, if you  
4 will, in that we monitor and regulate the harvest of  
5 that population by sex, as well the number on a  
6 relative small land base; i.e., the wildlife management  
7 unit. So we are managing a distinct population, if you  
8 will.

9 The other aspect that is useful in terms  
10 of meeting these targets is the fact that we have Moose  
11 Habitat Management Guidelines, we have a timber  
12 management planning process where we can input and be,  
13 as I said in my opening statement, proactive rather  
14 than reactive vis-a-vis moose habitat -- we can create  
15 it, we are not always maintaining or protecting. We  
16 can be creative, we can create the habitat that will  
17 support these higher numbers.

18 So in essence although we don't have a  
19 written plan per say, we do have - and it doesn't cover  
20 all wildlife - I am speaking of a featured species, a  
21 species whose habitat requirements also meet habitat  
22 requirements of a variety of other wildlife species.

23 The point is: We have got a target, we  
24 have the tools to achieve those targets and we are  
25 doing that. So, in essence, we have a plan.

1                   Q. I just have two questions left for  
2                   you, Mr. McNicol. Can you advise me what criteria do  
3                   you used to decide if your participation in timber  
4                   management planning has been effective?

5                   A. First, I would want to ensure that  
6                   all of the areas of concern had been identified  
7                   throughout the timber management planning process; and  
8                   two, that those concerns had been adequately addressed  
9                   through planning process again.

10                  If there was a situation where there was a  
11                  conflict in a particular area, conflicting objectives  
12                  say from a forest management standpoint versus moose,  
13                  the process, the team approach allows for open  
14                  discussion of objectives on this particular land base,  
15                  this is a change from the old process, if you will.

16                  And with open and frank discussion often  
17                  we can resolve these conflicts but, where we can't, we  
18                  make intelligent compromises. Forest management gives,  
19                  wildlife gives, we come up with a compromise situation  
20                  that's not ideal for either of us, but will satisfy  
21                  some of each of our requirements for objective meeting  
22                  on that particular land base.

23                  MR. FREIDIN: I think that would be --  
24                  those are all my questions for Mr. McNicol, so I think  
25                  it would a convenient place to break for the day,

1 subject to Mr. Campbell.

2 THE CHAIRMAN: Very well. Mr. Campbell?

3 MR. CAMPBELL: Mr. Jeffery, my matter  
4 relates to interrogatories.

5 In the spirit of cooperation amongst  
6 counsel, Ms. Murphy and I have adopted the practice of  
7 I review with her my interrogatories before formally  
8 submitting them. That process with respect to Panel 8  
9 and 9 interrogatories is now complete and the  
10 interrogatories will be formally submitted.

11 Ms. Murphy has them now, knows what our  
12 interrogatories are. I am simply asking a dispensation  
13 from the Board with respect to the distribution of them  
14 to other parties. There were some changes that were  
15 made in them as a result of our discussions and they  
16 have to be retyped.

17 I am not going to, in effect, be back in  
18 Toronto on a business day until a week Friday and I  
19 won't bore you with the fact that I am presently  
20 without a secretary in my office which will also be  
21 fixed by a week Friday.

22 But if I could have a dispensation from  
23 the Board for distributing those interrogatories to  
24 other parties beyond today - today is the last day  
25 according to the Board's rule for Panel 9 - I would



1 appreciate it. This will not delay, in any way, their  
2 being dealt with by MNR.

3 THE CHAIRMAN: Well, firstly is there any  
4 objections by any of the other parties when - just  
5 before you go, Mr. Cosman - the import of the Board's  
6 discussion and ruling yesterday was that it is the  
7 Board's intention not to enforce or compel the party to  
8 whom the interrogatories are submitted to answer the  
9 interrogatories if they are submitted late.

10 That wasn't meant to preclude the party  
11 to whom they are submitted from voluntarily answering  
12 them if we they wanted to.

13 We am not trying to discourage answers in  
14 any way. What we are saying is we have to play fair  
15 with both sides and if they are not submitted in time,  
16 then the party that would normally be required to  
17 answer them, as far as the Board is concerned, will be  
18 relieved from being compelled to answer them.

19 Now, knowing your distribution is late,  
20 as it is in this case, it creates the further problem  
21 that other parties may be relying on interrogatories  
22 submitted by certain parties so that they won't all  
23 submit the same ones. In other words, there is a  
24 coattail effect to a certain extent.

25 That does not mean to say that each party

1 does not have the obligation if they want to ask a  
2 question, to ask even the very same question by way of  
3 interrogatory -- just one second Mr. Campbell.

4 And notwithstanding that, it is obvious  
5 that you are going to be late in distributing them and  
6 I think, in the circumstances, since the Board just  
7 indicated yesterday that it is intending in the future  
8 to be much more vigilant in monitoring the time lines  
9 established in the rules, we would probably be prepared  
10 I think on this occasion to allow the later  
11 distribution provided that other parties do not wish to  
12 raise objections to which the Board might be persuaded  
13 otherwise.

14 MR. CAMPBELL: I should say, Mr.  
15 Chairman, subject to distribution to other parties with  
16 respect to submission to the parties who have to answer  
17 them, I am entirely on time with Panel 9 and Ms. Murphy  
18 is taking no objection on behalf of MNR with respect to  
19 the submission of Panel 8 interrogatories. That matter  
20 has been specifically discussed with her.

21 It is simply I have a small -- because we  
22 try to go through this extra loop, I now have a small  
23 logis problem simply in terms of getting the final  
24 changes made and getting them distributed.

25 But if anyone else had to submit by



1       today, our meeting the rule for Panel 9 today would  
2       make no difference to them.

3               As you can understand, as I tried to  
4       explain yesterday, we have taken steps to ensure that  
5       this whole thing -- our difficulty because of the  
6       accumulation of material, we now have taken steps to  
7       ensure that we do not have this situation arise again.

8               THE CHAIRMAN: Right. And we also  
9       understand. The Board is not unsympathetic with the  
10      fact that Panel 7 and the voluminous amount of material  
11      with Panel 7 is somewhat unusual.

12              I suspect we may be into the same kind of  
13      suggestion when we reach Panel 15 in terms of the  
14      witness statement for Panel 15 but we will worry about  
15      that then.

16              Mr. Cosman, do you --

17              MR. COSMAN: Yes, Mr. Chairman, very  
18      shortly. I certainly have no objection to the late  
19      delivery in the circumstances of those formal  
20      questions.

21              My only concern would be that we wouldn't  
22      see the questions that were asked, but since the MNR  
23      answers those questions in the form of setting out what  
24      it is that is being asked in its final form from Mr.  
25      Campbell, we will see them in the answers, of course.



1 THE CHAIRMAN: You will just get them a  
2 bit later.

3 MR. COSMAN: Yes, that's fine.

4 THE CHAIRMAN: Is that sufficient? We  
5 are happy if MNR is happy in the circumstances.

6 MR. CAMPBELL: Thank you, Mr. Chairman.  
7 Normally I wouldn't even have raised the matter, but I  
8 thought, in light of yesterday's ruling, I ought to do  
9 so.

10 THE CHAIRMAN: Okay.

11 Well, ladies and gentlemen, I think we  
12 will adjourn for today. Tomorrow we will be probably  
13 rising around two o'clock or 2:30, thereabouts, so we  
14 should probably start at 8:30 tomorrow.

15 Does that pose a major problem?

16 MR. FREIDIN: No.

17 THE CHAIRMAN: We will start anyways.

18 MR. FREIDIN: Nine o'clock?

19 THE CHAIRMAN: 8: 30 tomorrow morning.

20 Thank you.

21 ---Whereupon the hearing adjourned at 4:13 p.m., to be  
22 reconvened on Friday, November 4th, 1988, commencing  
at 8:30 a.m..

23

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